Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 24, 1992

Ms. Elaine H. Piper
Assistant City Attorney
Police Legal Advisor
Office of the City Attorney
City of El Paso
2 Civic Center Plaza
El Paso, Texas 79999

OR92-509

Dear Ms. Piper:

The El Paso Police Department (the "department") received a request dated May 8, 1992, for the names of all individuals arrested by the department's Gang Task Force, copies of the arrest reports of all persons arrested by the Gang Task Force, and the gang membership lists maintained by the Gang Task Force. The availability of some of this information was addressed in Open Records Letter OR92-366 (1992) (copy enclosed). You have submitted for our review, additional information which you failed to submit with your original request, specifically, records submitted to the requestor with deleted information marked in yellow. You ask whether the marked information is subject to required public disclosure under the Texas Open Records Act, V.T.C.S. article 6252-17a. Your request was assigned ID# 16776.

Open Records Act Section 7(a) requires a governmental body to release requested information or to request a decision from the attorney general within ten days of receiving a request for information the governmental body wishes to withhold. You received the request for information under the Open Records Act on May 8, 1992. With respect to the additional information at issue here, we received your request for a decision in a letter postmarked July 17, 1992. Consequently, with respect to the additional information, you failed to request a decision within the ten days required by section 7(a) of the act.

When a governmental body fails to request a decision within ten days of receiving a request for information, the information at issue is presumed public. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City*

of Houston v. Houston Chronicle Publishing Co., 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The governmental body must show a compelling reason to withhold the information to overcome this presumption. *See id.* Normally, the presumption of openness can be overcome only by a compelling demonstration that the information should not be released to the public, *i.e.*, that the information is deemed confidential by some other law or that third-party interests are at stake. Open Records Decision No. 150 (1977); *see also* Open Records Decision No. 586 (1991) (law enforcement interest of third-party may be compelling). You have submitted for our review eight exhibits, A through H, and claim that the marked information is excepted from required public disclosure by Open Records Act sections 3(a)(1), 3(a)(8), and 3(a)(11).[1]

Section 3(a)(1) excepts from required public disclosure "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." Exhibit D contains information release of which would identify a juvenile arrestee. Section 51.14(d) of the Family Code relates to the law enforcement files and records of juveniles. Section 51.14(d) states in part:

> Except for files and records relating to a charge for which a child is transferred under Section 54.02 of this code to a criminal court for prosecution, the law-enforcement files and records are not open to public inspection nor may their contents be disclosed to the public.

Open Records Decision No. 181 (1977) at 3 held that information contained in law enforcement records that would identify or tend to identify juvenile offenders may be withheld from required public disclosure. The files and records of juvenile offenders and any information that identifies or would tend to identify juvenile offenders is made confidential by law and may not be released. *See also* Open Records Decision No. 394 (1983). Accordingly, the information identified in Exhibit D which would tend to identify juvenile offenders must be withheld from required public disclosure under section 3(a)(1).

Section 3(a)(8) excepts from required public disclosure

---

[1]Exhibit C contains information relating to incidents involving family violence. This office is currently considering in the context of a formal open records decision whether privacy or law enforcement interests are implicated in the release of such information. Only upon resolution of this question will this office issue a ruling concerning the availability of Exhibit C.

> records of law enforcement agencies and prosecutors that deal with the detection, investigation, and prosecution of crime and the internal records and notations of such law enforcement agencies and prosecutors which are maintained for internal use in matters relating to law enforcement and prosecution.

This office has stated in previous open records decisions that the test for determining whether records are excepted from public disclosure under section 3(a)(8) is whether release of the records would unduly interfere with law enforcement and crime prevention. Open Records Decisions Nos. 553 (1990) at 4; 474 (1987) at 5; *see also Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977) (*citing Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976)). When the "law enforcement" exception is claimed as a basis for excluding information from public view, the agency claiming it must reasonably explain, if the information does not supply the explanation on its face, how and why release of the requested information would unduly interfere with law enforcement. Open Records Decision No. 434 (1986) at 2-3.

You indicate that release of certain information contained in Exhibit A would identify officers working undercover. You advise that release of this information would undermine a law enforcement investigation and violate the personal security of the police officers involved in the undercover investigation. Exhibits F and H include information which identifies the witnesses and victims of violent crimes. You contend that release of this information would result in harassment and possible retaliation against witnesses and victims. With respect to exhibits A, F, and H, we conclude that the heightened presumption of openness arising out of the department's failure to timely request a decision is rebutted by the department's interests in withholding the marked information in order to safeguard the personal security of police officers, witnesses, and victims. Information marked in exhibits A, F, and H, may be withheld from required public disclosure under section 3(a)(8). We conclude, however, that you have not overcome the presumption of openness with respect to exhibits B and G. Accordingly, exhibits B and G may not be withheld under section 3(a)(8) and must be released in their entirety.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with

a published open records decision. If you have questions about this ruling, please refer to OR92-509.

Very truly yours,

Geoffrey Hennessey
Assistant Attorney General
Opinion Committee

GH/GCK/lmm

Enclosure: Open Records Letter OR92-366

Ref.: ID# 16776

cc: Mr. Raul Hernandez
El Paso Herald-Post
P. O. Box 20
El Paso, Texas 79999