



Office of the Attorney General

State of Texas

September 2, 1992

DAN MORALES
ATTORNEY GENERAL

Mr. Don R. Lane
Attorney for the City of Pampa
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OR92-526

Dear Mr. Lane:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 16260.

The police department of the City of Pampa (the city) recently conducted an internal affairs investigation of several police officers. The city has received three open records requests for information pertaining to this investigation. Two officers who were subjects of the investigation have requested "copies of complaints signed against [them] sustained in the internal affairs investigation and the internal affairs investigation report." The third requestor, the Pampa News, has requested "all documents pertaining to the recent internal investigation of the police department [which] concluded with the termination of officers Dave Wilkenson and Nick Fortner . . . [including] investigator Darrell Dewey's report to the police chief."

You inform us that the city has released to the police officers the following information: the written charge made by the police chief; the statement by Cory Powell; written notice of the pretermination hearing; and notice of termination of employment. The city has released to the Pampa News the names of the officers involved in the investigation and copies of the notice of termination of employment.

You seek to withhold copies of the police internal affairs investigation report (Exhibits B, C, D and E) and two notices of a predetermination hearing (Exhibits F and G) based on sections 3(a)(1), 3(a)(2), 3(a)(3), 3(a)(8), and 3(a)(11) of the Open Records Act. You also seek to withhold copies of the complaints against two police officers (Exhibits A-1 and A-2) pursuant to sections 3(a)(3) and 3(a)(11).

Section 3(a)(3) of the Open Records Act permits a governmental body to withhold from required public disclosure information that relates to pending or reasonably anticipated litigation to which that governmental body is a party. Open Records Decision No. 551 (1990). This is so because the discovery process, rather than the Open Records Act, is the proper means of obtaining such information. *Id.*

The report in question is a result of an investigation into certain allegations against several Pampa police officers. The Pampa police department terminated the employment of two officers who were the subjects of the investigation. These two officers filed suit on June 11, 1992, in the 53rd Judicial District Court in Travis County to challenge their termination. *Wilkinson and Fortner v. City of Pampa*, Cause No. 92-08350. We conclude that the requested information relates to pending litigation; the investigation report may therefore be withheld pursuant to section 3(a)(3) of the Open Records Act.

You also assert the above specified exceptions to required public disclosure in regard to the brief submitted with this request for an open records decision. We agree that you may withhold the highlighted portions of the brief pursuant to section 3(a)(3) as they too relate to the pending litigation, to the extent such information has not already been released to the opposing party in the litigation.

You informed us that discovery has begun in this litigation. In reaching our conclusion that you may withhold the report based on section 3(a)(3), we assume that the opposing parties to the litigation have not had access to the report at issue. Once information has been obtained by all parties to the litigation, through discovery or otherwise, no section 3(a)(3) interest exists with respect to that information. Open Records Decision Nos. 349, 320 (1982). If the opposing parties in the litigation have had access to the report, there would be no justification for now withholding it pursuant to section 3(a)(3). Furthermore, the applicability of section 3(a)(3) ends once the litigation has concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

Section 3(a)(3) does not apply to the copies of the complaints brought by the police chief and the notices of a predetermination hearing, since the two officers involved in the litigation have seen this information. You contend you may withhold the complaints pursuant to section 3(a)(11) of the Open Records Act which protects interagency information consisting of advice, opinion and recommendation that is used in the deliberative process. Open Records Decision No. 574 (1990) Facts and written observations of facts may not be withheld under this exception. *Id.* The

complaints are purely factual; therefore, section 3(a)(11) is not applicable. *See* Open Records Decision No. 350 (1982) at 3. Consequently, the two complaints must be released.¹

Similarly, the two notices of a pretermination hearing are factual and not entitled to the protection of section 3(a)(11). We do not understand you to assert that sections 3(a)(1) and 3(a)(8) apply to these notices, nor do we think you could support such an assertion, since the notices were sent to the officers. Furthermore, the release of the notices would not constitute a "clearly unwarranted invasion of personal privacy" under section 3(a)(2) because of the legitimate public interest in the manner in which a public employee performs his job and the reasons for dismissal of a public employee. *See* Open Records Decision Nos. 444 (1986); 350 (1982). We therefore conclude that the notices are public information and must be released.

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 OR92-526.

Yours very truly,



Kay H. Guajardo
Assistant Attorney General
Opinion Committee

KHG/lmm

Ref.: ID# 16260

¹In your letter of June 11, 1992, in which you asserted several exceptions in the Open Records Act to the disclosure of the brief you submitted with this request, you indicated that the you would release the complaints. The Open Records Act prohibits selective disclosure to members of the public. Open Records Decision No. 463 (1987). Thus, if the complaints are released to one requestor, they cannot be withheld from disclosure to another requestor. *See* V.T.C.S. art. 6252-17a, §14(a).

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