



Office of the Attorney General

State of Texas

December 29, 1992

DAN MORALES

ATTORNEY GENERAL

Mr. Dan Pleitz

Naman, Howell, Smith & Lee, P.C.

P. O. Box 1470

Waco, Texas 76703-1470

OR92-642

Dear Mr. Pleitz:

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# 17779.

The City of Robinson (the "city"), which you represent, has received a request for information relating to the city's finances. Specifically at issue here are "[a]ll Telephone Bills including long distant calls from September 1989, 1990, 1991, and 1992."¹ You have submitted to us for review the requested telephone billing statements, claiming that they are excepted from required public disclosure by section 3(a)(8) of the Open Records Act.²

Section 3(a)(8) of the act excepts from required public disclosure:

records of law enforcement agencies and prosecutors that deal with the detection, investigation, and prosecution of crime and the

¹Requested information not at issue here includes a cash flow analysis dated September 30, 1992, a statement of operations dated September 30, 1992, a balance sheet dated September 30, 1992, a budget comparison for the period of September 30, 1991, through September 30, 1992, and a copy of certain roll back election ballots. You advise us that some of this information has been made available to the requestor. Although the city is not obligated to make information available which it does not possess or which is not in existence at the time of the request, *see* Open Records Decision Nos. 572; 558 (1990), you also advise us that some of this information not now in the city's possession will be made available to the requestor following its preparation.

²In the event that this office determines that some or all of the information at issue here must be made available to the requestor, you ask how under section 9 of the Open Records Act the city may assess the costs of reproducing the requested information. We direct your attention to title 1, sections 111.61 through 111.63 of the Texas Administrative Code (copies enclosed), which are regulations promulgated by the Texas General Services Commission governing the costs of copies of open records. Section 9(a) of the Open Records Act provides that the cost of access to or copies of up to legal sized public records may include the cost of materials, labor, and overhead, unless the request is for 50 pages or less of readily available information. *See* Open Records Decision No. 488 (1988) (copy enclosed). Section 11 of the Open Records Act permits the officer for public records to require a bond for payment of costs or prepayment "where the record is unduly costly and its reproduction would cause undue hardship to the department or agency if the costs were not paid." *Id.*

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.

Traditionally, our office has distinguished between cases that are still under active investigation and closed cases when applying section 3(a)(8). In cases that are still under active investigation, this section excepts from disclosure all information except that generally found on the first page of the offense report. In closed cases, however, the governmental body must demonstrate, or the documents must demonstrate on their face, that release of the information would unduly interfere with law enforcement or prosecution before it can withhold the information under section 3(a)(8). Open Records Decision No. 216 (1978) at 4; *see also* Open Records Decision Nos. 474 (1987); 434 (1986).

You advise us that the telephone bills at issue here relate in part to ongoing criminal investigations:

The city police department constantly has ongoing criminal investigations which involve extensive use of long distance. While the City has not analyzed these phone bills, the City reasonably believes that more than half of the phone calls are to witnesses, suspects, informants, laboratory or other investigators, or other persons who are engaged in ongoing criminal investigations. . . . The City is willing to make available the phone records that do not relate to ongoing criminal investigations. However, it will take an extensive amount of work to reconstruct exactly what phone numbers are those of persons involved in ongoing criminal investigations, and what phone numbers are not.

The city has not demonstrated to us which portions of those bills relate to ongoing criminal investigations, nor has the city demonstrated how release of the bills related to closed cases might undermine legitimate interests of law enforcement. The documents submitted to us for review do not provide an explanation on their face. Absent such demonstrations, we have no basis to conclude that the telephone bills may be withheld from required public disclosure under section 3(a)(8) of the Open Records Act. Accordingly, we conclude that the requested information must be released in its 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 OR92-642.

Yours very truly,



Celeste A. Baker
Assistant Attorney General
Opinion Committee

CAB/GCK/lmm

Ref.: ID# 17779
ID# 17923

Enclosures: Submitted documents
Open Records Decision No. 488
1 T.A.C. §§ 111.61 - 111.63

cc: Mr. Penn Wheelis
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