



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 2, 1993

Honorable James M. Kuboviak
Brazos County Attorney
300 E. 26th Street, Suite 325
Bryan, Texas 77803

OR93-046

Dear Mr. Kuboviak:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the act), V.T.C.S. article 6252-17a. Your request was assigned ID# 18199.

The Office of the Brazos County Attorney has received a request for information relating to two arrestees. Specifically, the requestor seeks:

Documentation reflecting the refusal of the above-referenced cases filed with [the County Attorney's Office]. Any police reports or information filed with [the County Attorney's Office] from the police department.

You inform us that your office has refused misdemeanor charges for prosecution against both arrestees. However, we understand that a sworn complaint for aggravated assault on a peace officer by one of the arrestees has been filed in the Justice Court by the Brazos County District Attorney's Office and that charges are pending in that office. You assert that the documents responsive to the request are excepted from required public disclosure under section 3(a)(3) and section 3(a)(8) of the act.

Section 3(a)(8), the "law enforcement" exception, exempts

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.

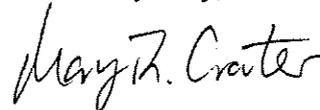
V.T.C.S. art. 6252-17a, § 3(a)(8). Where an incident involving allegedly criminal conduct is under active investigation or prosecution, section 3(a)(8) may be invoked by any proper custodian of information related to the incident. Open Records Decision Nos. 474 (1987)

at 4-5; 372 (1983) at 4. A series of court and open records decisions dating back to 1975 has determined, however, that certain basic information ordinarily appearing in offense reports and similar records relating to arrests is not excepted from public disclosure by section 3(a)(8). See, e.g., *City of Houston v. Houston Chronicle Publishing Co.*, 673 S.W.2d 316 (Tex. App.--Houston [1st Dist.] 1984, no writ); *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); Open Records Decision Nos. 366 (1983); 339 (1982); 127 (1976). Once a case is closed, information may be withheld only if its release "will unduly interfere with law enforcement and crime prevention." See Attorney General Opinion MW-446 (1982); Open Records Decision Nos. 366 (1983) at 3; 216 (1978) at 3 (citing *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977)).

As your office is no longer pursuing misdemeanor charges against the defendant, you base your section 3(a)(8) claim on the law enforcement interests of the Brazos County District Attorney. The District Attorney's Office has submitted a letter supporting your assertion. That office points out that most of the requested documents in your office's files are identical to documents in its files, and states that "if the offense reports and statements on the misdemeanor charges are disclosed, [the defendant] will have the entire felony file" Having examined the documents submitted to us for review, we conclude that release of the requested information would unduly interfere with the district attorney's pending prosecution. Accordingly, except for first page offense report information, the requested information may be withheld from required public disclosure under section 3(a)(8) of the act. As we resolve this issue under section 3(a)(8), we need not address your section 3(a)(3) claim at this time.¹

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 OR93-046.

Yours very truly,



Mary R. Crouter
Assistant Attorney General
Opinion Committee

MRC/GCK/lmm

Ref.: ID# 18199
ID# 18249

¹Front page offense report information may not be withheld from required public disclosure under section 3(a)(3). Open Records Decision No. 597 (1991).

Enclosures: Submitted documents

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(w/o enclosures)

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