



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 3, 1993

Mr. Brian N. Hail
Cowles & Thompson
901 Main Street, Suite 4000
Dallas, Texas 75202-3793

OR93-060

Dear Mr. Hail:

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# 18385.

The Town of Addison received an open records request for the front page of two offense reports from 1991 and 1992, pertaining to the drowning of two children. The requestor also seeks a copy of correspondence the town received from the attorney representing the family of the most recent drowning victim. You inquire whether the name and address of the deceased children must be withheld pursuant to common-law privacy, as incorporated in section 3(a)(1) of the Open Records Act. You also contend that the correspondence received by the town comes under the protection of section 3(a)(3) of the act.

Section 3(a)(1) of the act protects "information deemed confidential by law, either Constitutional, statutory, or by judicial decision," including the common-law right to privacy. *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* it is of no legitimate concern to the public. *Id.* at 683-85.

The right of privacy, however, is purely personal and lapses upon death. *See Moore v. Charles B. Pierce Film Enterprises Inc.*, 589 S.W.2d 489 (Tex. Civ. App.--Texarkana 1979, writ ref'd n.r.e.). *See also* Attorney General Opinions JM-229 (1984); H-917 (1976). Consequently, any privacy interest that the children may have had in having their identities withheld from the public no longer exists. Although information about a deceased person may be withheld if the information reveals highly intimate or embarrassing information about living persons, *see* Attorney General Opinion JM-229, such is not the case here. The town must therefore release the first page of the offense reports.

To secure the protection of section 3(a)(3), the "litigation exception," a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation. Open Records Decision Nos. 588 (1991); 452 (1986). You contend that the correspondence the city received is protected by section 3(a)(3) because the correspondence "puts [the town of] Addison on notice of potential civil litigation it may become involved in as a party" with regard to the most recent drowning. Absent special circumstances, once information has been obtained by all parties to the litigation, no section 3(a)(3) interest exists with respect to that information. Open Records Decision Nos. 349, 320 (1982). Because both parties to the potential litigation have access to the document at issue, there is no justification for now withholding that information from the requestor pursuant to section 3(a)(3). Accordingly, the town must release the correspondence.

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 OR93-060.

Yours very truly,



Rebecca L. Payne
Assistant Attorney General
Opinion Committee

RLP/RWP/lmm

Ref: ID# 18305

cc: Ms. Deborah Tedford
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