



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 17, 1993

Mr. Carter L. Hampton
Keller City Attorney
Staples & Hampton
701 Texas Commerce Bank Building
860 Airport Freeway West
Hurst, Texas 76054

OR93-073

Dear Mr. Hampton:

On behalf of the City of Keller Police Department, you ask whether certain information contained in the department records is subject to required public disclosure under the Texas Open Records Act, V.T.C.S. art. 6252-17a. Your request was assigned ID# 14895. You sent us portions of three files to review. For the sake of simplicity, we have designated the first file exhibit A, the second file exhibit B, and the third file exhibit C. We have marked the files accordingly.

The Keller Police Department (the department) received an open records request for documents relating to family violence. The department provided part of the requested information, but is seeking to withhold some of the information under sections 3(a)(1) and 3(a)(8) of the Open Records Act.

Section 3(a)(1) excepts from required public disclosure "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." Thus, it incorporates specific confidentiality statutes. Exhibit C describes an incident in which a juvenile was identified as the suspect. Under section 51.14(d) of the Family Code, law enforcement files involving juvenile suspects are confidential. See Open Records Decision No. 181 (1977). You must, therefore, withhold this file under section 3(a)(1) of the Open Records Act.

Section 3(a)(1) also encompasses common-law privacy and excepts from disclosure private facts about an individual. *Industrial Found. of the S. v. Texas Indus. Accident Bd*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Thus, information must be withheld from the public when (1) it is highly intimate and embarrassing so that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.*; Open Records Decision No. 409 (1984) at 1. However, an assault by one family member on another is a crime, not a family matter normally considered private. Thus, unless some

other facts make the assault highly intimate and embarrassing and of no public interest, information about the assault is public information. Open Records Decision No. 611 (1992) at 1-2. Our review of the files does not reveal any information indicating that these files should be removed from the general rule that information about family violence is not excepted from required public disclosure under common-law privacy. Therefore, you cannot withhold this information on this basis.

Finally, section 3(a)(1) incorporates the informer's privilege. The informer's privilege permits the government to protect the identity of persons who furnish information about violations of the law to officers charged with enforcing the law. The informer's privilege does not apply when the subject of the information already knows the informer's identity. Open Records Decision No. 208 (1978) at 1-2. In addition, a governmental body can waive the informer's privilege by failing to raise it. *See* Tex. R. Civ. Evid. 508; Tex. R. Crim. Evid. 508; Open Records Decision Nos. 549 (1990) at 6; 156 (1977) at 2,3.¹ The informer is not identified in exhibits B and C. In exhibit A, the victim called the police and the suspect knew about the call. Therefore, the informer's privilege does not apply to any of the information you submitted to us for review.

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 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.

As for files still under active investigation or prosecution, section 3(a)(8) may be invoked to withhold information relating to the incident, except for the information generally found on the first page of the offense report. *See* Open Records Decision No. 394 (1983). However, the application of section 3(a)(8) to files that are no longer active is more limited. Generally, a law enforcement agency may withhold information related to such files only if the agency can show that its release would unduly interfere with law enforcement. *See* Open Records Decision No. 397 (1983). The identities and statements of witnesses and informants have been withheld even in relation to closed files, if it appears that release of such information would expose the individuals to retaliation. *See* Open Records Decision No. 127 (1976).

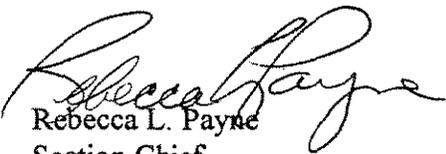
¹If a governmental body fails to raise the informer's privilege as an exception to required public disclosure, the information is presumed to be public if no other exception is raised. V.T.C.S. art. 6252-17a, § 7(a). The governmental body can, however, overcome this presumption by showing that a compelling interest exists why the information should not be released to the public. A compelling interest exists when a third party's interests are at stake. *See* Open Records Decisions Nos. 552 (1990); 150 (1977).

Thus, if any of the files you submitted to us for review are still under active investigation, you may withhold the information in the file under section 3(a)(8), except for information generally found on the first page of the offense report. We note, however, that the location of the information is not determinative of its status. The information identified by the court in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177, 186-87 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976), as information generally found on the first page of the offense report must be released regardless of where it is found. See Open Records Decision No. 127 (1976) at 5. As a result, you may not withhold the first two pages of exhibits A and B under section 3(a)(8); these pages contain the information generally found on the first page of the offense report.²

On the other hand, if any of the files you submitted to us for review are inactive or closed files, you have failed to demonstrate that the release of the information would unduly interfere with law enforcement or expose witnesses or informants to retaliation. The governmental body has the duty to explain how specific exceptions relate to specific information. Open Records Decision No. 582 (1990). Normally, when a governmental body fails to demonstrate that information should be excepted from required public disclosure, we must conclude that the information is not excepted from required public disclosure. Open Records Decision No. 363 (1983).

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 OR93-073.

Yours very truly,


Rebecca L. Payne
Section Chief
Open Government Section

RLP/MAR/lmm

Ref.: ID# 14895

Enclosure: Open Records Decision Nos. 611, 582, 397, 127

²On the other hand, you must withhold the first two pages of exhibit C, as well as the rest of exhibit C, under section 3(a)(1). See *supra* p. 1.

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