



Office of the Attorney General

State of Texas

March 12, 1993

DAN MORALES

ATTORNEY GENERAL

Honorable David Motley
Kerr County Attorney
700 East Main Street
Kerrville, Texas 78028-5324

OR93-101

Dear Mr. Motley:

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# 18328.

The Kerr County Sheriff received an open records request for the following information:

1. The most recent edition of the Kerr County Sheriff's Department's Manual of Standards and Practices or any equivalent document containing the rules, regulations and general orders regarding Department procedures.
2. Any arrest or incident report pertaining to my detention by Deputy Kindred, badge number k-21, on or about November 10, 1992.
3. The dispatcher's log from 5:00 pm November 10, 1992 to 12:00 am November 11, 1992.

You contend that the requested information comes under the protection of sections 3(a)(3) and 3(a)(8) of the Open Records Act.

You first contend that the information at issue comes under the protection of section 3(a)(3), the "litigation exception." To secure the protection of section 3(a)(3), a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation. Open Records Decision Nos. 588 (1991); 452 (1986). The mere chance of litigation will not trigger the 3(a)(3) exception. Open Records Decision Nos. 437 (1986); 331, 328 (1982). To demonstrate that litigation is reasonably anticipated, the governmental body must furnish concrete evidence that litigation involving a specific matter is realistically contemplated and is more than mere conjecture. *Id.*

You state that section 3(a)(3) applies in this instance because "We have independent information that leads us to believe that this information is sought for litigation purposes regarding this matter or another matter in which the requestor has already declared the intent to sue." This office has previously held that an isolated threat of a lawsuit alone does not constitute grounds for withholding information pursuant to section 3(a)(3). *See* Open Records Decision No. 351 (1982) at 2. You have provided no evidence that demonstrates that the requested material relates to reasonably anticipated litigation; consequently you may not withhold any of the requested information pursuant to section 3(a)(3).

You next contend that the incident report that you have submitted as responsive to the request comes under the protection of section 3(a)(8), the "law enforcement exception." Section 3(a)(8) 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.

V.T.C.S. art. 6252-17a, § 3(a)(8). *See generally 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) (establishing guidelines for withholding information pertaining to pending criminal investigations); *see also* Open Records Decision No. 127 (1976) (summarizing holding in *Houston Chronicle*).

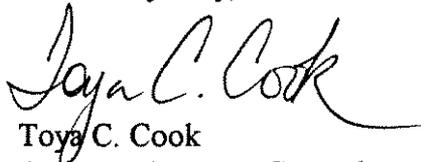
Whether this exception applies to particular records depends on whether their release would "unduly interfere" with law enforcement or prosecution. Open Records Decision Nos. 434 (1986); 287 (1981). When this section is raised, the agency claiming it must reasonably explain, if the information does not supply the explanation on its face, how the release of the information would unduly interfere with law enforcement. Open Records Decision No. 287 (1981). Whether disclosure of particular records will unduly interfere with law enforcement must be decided on a case-by-case basis. Attorney General Opinion MW-381 (1981).

We note that because the police investigation pertaining to the incident report has been closed, the guidelines established by the court of civil appeals in *Houston Chronicle Publishing Co.* do not apply here. *See, e.g.,* Open Records Decision Nos. 252 (1980); 216 (1978). You have not demonstrated, nor is it apparent from the face of the documents, how the release of this information would unduly interfere with law enforcement. Section 3(a)(8) does not protect these records from public disclosure. Because you have raised none of the act's other exceptions regarding this file, you must release the incident report and all attachments in their entirety.

You also argue that the sheriff's dispatch logs may be withheld pursuant to section 3(a)(8). In Open Records Decision No. 394 (1983), this office held that there was no qualitative difference between the information contained in police dispatch records and that which was expressly held to be public in Open Records Decision No. 127. After reviewing the logs, we have determined that none of the information at issue implicates the privacy interests of third parties. Accordingly, the logs 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 OR93-101.

Yours very truly,



Toya C. Cook
Assistant Attorney General
Opinion Committee

TCC/RWP/le

Ref.: ID# 18328

Enclosures: Submitted documents

cc: Mr. Kenny R. Crabb
P.O. Box 343
Center Point, Texas 78010

(w/o enclosures)