



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 24, 1993

Mr. Vernon Campbell
Chief of Police
Carrollton Police Department
2025 Jackson Road
Carrollton, Texas 75006

OR93-135

Dear Mr. Campbell:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, V.T.C.S. article 6252-17a. Your request was assigned ID# 19165.

The City of Carrollton ("the city") received a request for "all files and documents regarding the investigation of Matthew Varughese." You released the front page of two arrest reports, the front page of two offense reports and blotters. You contend you may withhold all other information in the city's files about this investigation based on sections 3(a)(1) and 3(a)(3) of the Open Records Act.

To secure the protection of section 3(a)(3), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 551 (1990). The information you seek to withhold includes the following: the initial case report from the Carrollton District Attorney's office, the Carrollton Police Department case report, Carrollton Police Department Offense Reports, several Carrollton Police Department Supplemental Investigative Reports, an autopsy report, a report of toxicology test results, an investigator's report from the Tarrant County Medical Examiner, several affidavits, criminal history information, crime scene photographs with their negatives, and a copy of a court exhibit showing the crime scene used in the trial of Matthew Varughese.

You inform us that Matthew Varughese was tried for murder and convicted. You say that he has filed a motion for a new trial and that the hearing on this motion was set for March 5, 1993. You contend that since Mr. Varughese has not exhausted all appellate and post-conviction remedies, litigation that relates to the requested information is still pending.

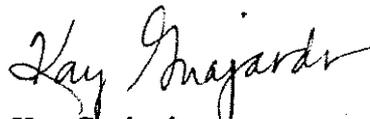
Section 3(e) of the Open Records Act states that for purposes of section 3(a)(3),

the state or a political subdivision is considered to be a party to litigation of a criminal nature until the applicable statute of limitations has expired or until the defendant has exhausted all appellate and postconviction remedies in state and federal court.

We agree that since Mr. Varughese has not exhausted all appellate and postconviction remedies in state and federal court, litigation that relates to the requested information is pending. Therefore, pursuant to section 3(a)(3), you may withhold the requested information, unless the opposing party to the litigation has seen or had access to the information. Once information has been obtained by a party to the litigation, no section 3(a)(3) interest exists with respect to that information. Open Records Decision Nos. 349, 320 (1982). The opposing party has clearly seen the court exhibit used in Mr. Varughese's trial. This court exhibit and any other information you have disclosed to the opposing party through discovery or otherwise, may not be withheld under section 3(a)(3).

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 OR93-135.

Yours very truly,



Kay Guajardo
Assistant Attorney General
Opinion Committee

KHG/MRC/le

cc: Ms. Rebecca Sherman
Observer
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