



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 17, 1993

Ms. Maida Modgling
County Attorney
Medina County Courthouse
Hondo, Texas 78861

OR93-234

Dear Ms. Modgling:

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# 19176.

Medina County (the "county") has received two requests for information relating to a closed investigation of the alleged theft of a dog. Specifically, the requestor who was the alleged dog thief, seeks "a copy of the Sheriff's Investigatory File, particularly the statement of the witnesses that were interviewed by the Sheriff's Department, particularly Deputy Bart Wester." You have submitted the requested information to us for review. Without expressly asserting any of the exceptions to disclosure enumerated in section 3(a) of the Open Records Act, you appear to claim that the requested information should be withheld from public disclosure under the litigation exception, section 3(a)(3), and the law enforcement exception, section 3(a)(8).

Section 3(a)(3) excepts

information relating to litigation of a criminal or civil nature and settlement negotiations, to which the state or political subdivision is, or may be, a party, or to which an officer or employee of the state or political subdivision, as a consequence of his office or employment, is or may be a party, that the attorney general or the respective attorneys of the various political subdivisions has determined should be withheld from public inspection.

Section 3(a)(3) applies only when litigation in a specific matter is pending or reasonably anticipated and only to information clearly relevant to that litigation. Open Records Decision No. 551 (1990). Whether litigation may be reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 (1986).

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You advise us that the requestor has notified the person who accused him of dog theft that he intends to sue the accuser. You do not indicate, however, nor is it otherwise apparent, that the requestor intends to file suit against the county. In fact, the requestor, in his letter of February 15, 1993, to the county, states "that there is no claim of wrong doing made by my client against the Medina County Sheriff's Department." We conclude that you have not demonstrated that litigation "to which the state or political subdivision is, or may be, a party" may be reasonably anticipated. Accordingly, the requested information may not be withheld from required public disclosure under section 3(a)(3) of the Open Records Act.

You also claim that some of the closed investigatory file at issue here is exempted from required public disclosure by section 3(a)(8), which 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.

Traditionally, our office has distinguished between cases that are still under active investigation and closed cases when applying section 3(a)(8). In cases that are still under active investigation, that section exempts from disclosure all information except that generally found on the first page of the offense report. In closed cases, however, the governmental body must demonstrate that release of the information would unduly interfere with law enforcement or prosecution before it can withhold the information under section 3(a)(8). Open Records Decision No. 216 (1978) at 4. For instance, in Open Records Decision No. 397 (1983) at 2, this office held that the names of witnesses and their statements contained in a closed investigatory file may be withheld if it is determined

from an examination of the facts of the particular case that disclosure might either subject the witnesses to possible intimidation or harassment or harm the prospects of future cooperation between witnesses and law enforcement officers.

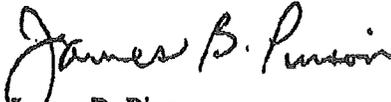
See also Open Records Decision No. 252 (1980) at 4.

We have examined the documents submitted to us for review. You have not explained why release of the requested information would unduly interfere with law enforcement, nor do the documents submitted to us for review provide an explanation on their face. Accordingly, the requested information may not be withheld from required public disclosure under section 3(a)(8) of the Open Records Act and must be released in its entirety.

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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 contact our office.

Yours very truly,



James B. Pinson
Assistant Attorney General
Opinion Committee

JBP/GCK/le

Ref: ID# 19176
ID# 19561
ID# 19634

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