



Office of the Attorney General
State of Texas

May 21, 1993

DAN MORALES
ATTORNEY GENERAL

Mr. Dib Waldrip
Assistant District Attorney
81st Judicial District
Karnes County Courthouse
101 N. Panna Maria, Suite 14
Karnes City, Texas 78118-3347

OR93-260

Dear Mr. Waldrip:

You request reconsideration of Open Records Letter OR93-238 (1993), wherein this office held that certain information contained in your trial and appellate files (the files) regarding the criminal prosecution of Mr. Pedro Sosa is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request for reconsideration was assigned ID# 20285.

In OR93-238, this office determined that certain records contained in the files did not come under the protection of the specific exceptions your office raised and that your office must therefore release those records. In your request for reconsideration, you now seek to withhold those records pursuant to section 3(a)(3), the "litigation exception."¹ Generally, when a governmental body fails to raise an exception with regard to a particular document in a timely manner, the protection of that exception is deemed to be waived. Open Records Decision No. 515 (1988) at 6. In order to withhold information under an exception not previously raised, the governmental body must show compelling reasons why this office should consider additional arguments. *Id.* In this instance, you contend that "the State possesses a compelling interest in not disclosing the portions of the file which Sosa would not have been entitled to receive in the criminal discovery process."

However, not only have you failed to identify the specific documents previously held to be public that you believe to be privileged, you have also failed to specify the

¹You also contend that the open records request was "global and overly-broad." A request for records made pursuant to the Open Records Act may not be disregarded simply because a citizen does not specify the exact documents he desires. When a requestor makes a vague request, the governmental body should make a good faith effort to advise the requestor of the types of documents available so that the requestor may narrow the request. *See* Open Records Decision No. 87 (1975). In this instance, you have presented this office with no evidence that such a good faith effort took place. This office therefore regards the request as valid.

nature of the compelling interest with regard to those documents. The mere fact that section 3(a)(3) would otherwise protect certain information does not constitute a compelling reason why the information should not be released to the public. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App. - Austin 1990, no writ). We also note that information that is privileged from discovery is not deemed to be confidential for purposes of section 3(a)(1) of the act, which protects "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." Open Records Decision No. 575 (1990).

Because you have failed to establish compelling reasons for withholding those records previously held to be public, this office declines your request for reconsideration of OR93-238. If you have questions about this ruling, please contact our office.

Yours very truly,


Rebecca L. Payne
Section Chief
Open Government Section

RLP/RWP/lmm

Ref.: ID# 20285
OR93-238

cc: Mr. Joel D. Schwartz
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