



Office of the Attorney General
State of Texas

June 15, 1993

DAN MORALES
ATTORNEY GENERAL

Ms. Deena J. McConnell
Assistant District Attorney
300 East 26th Street, Suite 310
Brazos County Courthouse
Bryan, Texas 77803

OR93-320

Dear Ms. McConnell:

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# 20685.

Brazos County (the "county"), through its sheriff's department, has received twenty-four requests for information relating to Mr. Terry David Wayne Washington, who is scheduled to be executed June 17, 1993, for the offense of capital murder. Specifically, the requestor seeks "an opportunity to review and copy all files, records and any other documents in the possession of the Brazos County Sheriff's Office pertaining" to Mr. Washington and twenty-three other individuals. You have submitted the requested information to us for review and claim that it is excepted from required public disclosure by sections 3(a)(3), 3(a)(8), and 3(a)(11) of the Open Records Act.

Section 3(a)(3) excepts from required public disclosure:

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.

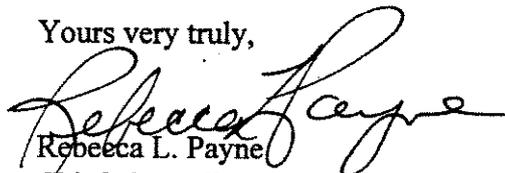
Section 3(a)(3) applies only when litigation in a specific matter is pending or reasonably anticipated and only to information clearly relevant to that litigation. Open Records Decision No. 551 (1990) at 4. Section 3(a)(3) requires parties to a lawsuit to seek relevant information through the normal process of discovery. *Id.* Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records

Decision No. 452 (1986) at 4. In Open Records Decision No. 597 (1991), this office held that section 3(a)(3) cannot be invoked to withhold from disclosure first page offense report information held to be open in *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), from a defendant who has been indicted, because that information has already been made available to the defendant in the course of his charge and indictment.

We understand that the requestor has filed a writ of habeas corpus on behalf of Mr. Washington. We conclude, therefore, that litigation to which the state is a party is pending in this matter. Furthermore, we accept your determination that the requested information relates to the pending litigation. Accordingly, unless already released to the requestor through discovery, court order, or other means, the requested information, except for first page offense report information, may be withheld from required public disclosure under section 3(a)(3) of the Open Records Act. As we resolve this matter under section 3(a)(3), we need not address the applicability of sections 3(a)(8) and 3(a)(11) at this time.

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 this office.

Yours very truly,


Rebecca L. Payne
Chief, Open Government Section
Opinion Committee

RLP/GCK/jmn

Ref.: ID# 20685

cc: Mr. John W. Michener, Jr.
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