



Office of the Attorney General  
State of Texas

June 15, 1993

DAN MORALES  
ATTORNEY GENERAL

Mr. Mark S. Houser  
Attorney for the City of Princeton  
1600 Redbud Blvd. Suite 400  
P. O. Box 844  
McKinney, Texas 75069-0844

OR93-324

Dear Mr. Houser:

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# 19259.

The City of Princeton (the city) received an open records request for access to "the information contained in the files of the Princeton Police Department from approximately 10/76 to present naming me as a suspect in any offense report." You state that you have released to the requestor most of the records he seeks. You contend, however, that other information comes under the protection of sections 3(a)(1) and 3(a)(8) of the Open Records Act.<sup>1</sup>

Section 3(a)(8), known as the "law enforcement" exception, 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.

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). One of the purposes of the exception is to protect law

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<sup>1</sup>We note that you have submitted to this office for review documents that clearly do not come within the ambit of the open records request. Accordingly, this office does not address whether the city must release Exhibits H, I, or J to the requestor at this time.

enforcement and crime prevention efforts by preventing suspects and criminals from using records in evading detection and capture. *See* Open Records Decision Nos. 133, 127 (1976).

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), the court of civil appeals established the guidelines on what constitutes public information contained in police files. The court's holding was summarized in Open Records Decision No. 127, a review of which indicates that the front page of the offense report, which includes the name of the complainant, is public information. Consequently, the city must release this information.

Whether disclosure of particular records will unduly interfere with crime prevention must be decided on a case-by-case basis. Attorney General Opinion MW-381 (1981). Section 3(a)(8) may, even without the existence of prosecution, protect valid law enforcement interests such as confidential investigative techniques and the privacy and safety of witnesses. When the applicability of section 3(a)(8) is not readily apparent from the face of the information, governmental bodies seeking to withhold information must demonstrate how and why section 3(a)(8) applies to it. *Id.* In this instance, although you contend that "the release of the information . . . may reveal certain investigative techniques of the City of Princeton," this office was unable to identify any secret police techniques the disclosure of which would unduly interfere with law enforcement.

You also contend that sections 3(a)(1), pursuant to the informer's privilege, and 3(a)(8) except from public disclosure information tending to identify witnesses. Two reasons for withholding names of witnesses pursuant to the informer's privilege, despite the absence of a criminal prosecution, are that disclosure might either (1) subject the witnesses to intimidation or harassment or (2) harm the prospects of future cooperation between witnesses and law enforcement authorities. Open Records Decision No. 252 (1980). Where criminal investigations are closed, however, these two factors, like the section 3(a)(8) interests listed above, must be examined on a case-by-case basis before governmental bodies may withhold such information. *Id.*

You have not explained, nor is it apparent to this office, how the interests listed above would in this instance be implicated by the release of the witnesses' identities. Although you inform this office that the requestor has alleged that officials with the Princeton Housing Authority have violated the Texas Open Meetings Act, V.T.C.S. art. 6252-17, this office fails to see the nexus between that allegation and the probability that the requestor is likely to harass witnesses to crimes that occurred over ten years ago.

Because you have not met your burden under either section 3(a)(1) or 3(a)(8) with regard to this information, the city must release all information that identifies the witnesses.<sup>2</sup>

Finally, you seek to withhold from the requestor copies of his own criminal history record information (CHRI). This aspect of your request is governed by Open Records Decision No. 565 (1990). Because you have not demonstrated any section 3(a)(8) interest in withholding from the requestor his own CHRI obtained from the Texas Crime Information Center (TCIC), this information must be released in this instance pursuant to section 3B of the Open Records Act. However, the city must withhold CHRI obtained from the National Crime Information Center Interstate Identification Index (NCIC III).<sup>3</sup>

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,



Toya C. Cook  
Assistant Attorney General  
Opinion Committee

TCC/RWP/jmn

Ref.: ID# 19259  
ID# 19293

cc: Mr. Brent McLean  
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(w/o enclosures)

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<sup>2</sup>We further note that because part of the purpose of the informer's privilege is to prevent retaliation against informants, the privilege does not apply when the informant's identity is known to the party complained of. See Open Records Decision No. 208 (1978).

<sup>3</sup>Persons who are subjects of NCIC III records may obtain information concerning the records from the FBI in accordance with federal regulations. See 28 C.F.R. § 20.1 *et seq.*