Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 29, 1993

Mr. William J. Delmore, III
General Counsel
Office of the District Attorney
201 Fannin, Suite 200
Houston, Texas 77002-1901

OR93-358

Dear Mr. Delmore:

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# 19962.

The Harris County District Attorney's Office (the "district attorney") has received a request for access to the district attorney's file regarding Mr. Adam Valle, who was convicted of murdering Russell Le Nafegar. You do not object to release of some of the requested information. You claim, however, that the remaining information may be withheld from required public disclosure under section 3(a) of the Open Records Act.

As a threshold issue, we first address your contention that the district attorney's office is a part of the judiciary within the meaning of section 2(1)(H) of the act and therefore is not subject to the act. We rejected this argument in a recent ruling issued to your office, Open Records Letter OR93-213 (1993). As we stated in that letter, a district attorney's office does not fall within the judiciary exception because it is not a court and is not directly controlled or supervised by one and because its functions are primarily executive in that its primary duty is to enforce the law. *See* Attorney General Opinion JM-266 (1984). Furthermore, the district attorney is an entity that is supported by or expends public funds. V.T.C.S. art. 6252-17a, § 2(1)(G) (definition of governmental body). Accordingly, the district attorney is subject to the act and must release the requested information unless it falls within one of the exceptions enumerated in section 3(a) of the act. You claim that the requested information is excepted from required public disclosure by sections 3(a)(1), 3(a)(3), and 3(a)(8) of the Open Records Act.

Section 3(a)(1) excepts from required public disclosure "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." You claim

that the requested information is excepted by section 3(a)(1) because it constitutes work product and is subject to the "law enforcement privilege" set forth in *Hobson v. Moore*, 734 S.W.2d 340 (Tex. 1987). This argument was also rejected in Open Records Letter OR93-213. As we stated in that ruling, section 3(a)(1) does not encompass work product or discovery privileges. *See also* Open Records Decision No. 575 (1990). Such protection may exist under section 3(a)(3), if the situation meets the section 3(a)(3) requirements.[1]

You advise us that Mr. Valle was convicted on January 20, 1993, and has to date given no notice of appeal, nor has he filed any application for habeas corpus relief. You do not indicate that litigation in this matter is pending or reasonably anticipated. We thus have no basis on which to conclude that the requested information may be withheld from required public disclosure under either the work product doctrine or section 3(a)(3) of the Open Records Act. *See* Open Records Decision Nos. 551 (1990) (section 3(a)(3) applies to information relating to pending or reasonably anticipated litigation); 518 (1988) (section 3(e) does not relieve governmental body from demonstrating general applicability of section 3(a)(3)).

With respect to section 3(a)(8), you argue that this exception should apply to all material in a closed law enforcement file. You also dispute our use of a standard that permits you to withhold from a closed file only that information the release of which would "unduly interfere with law enforcement." In Open Records Letter OR93-213, we reviewed the same argument and rejected it. Accordingly, we will apply the existing standard of undue interference with law enforcement. Since you do not claim that any undue interference with law enforcement will be caused by releasing the requested information, you have waived this argument. 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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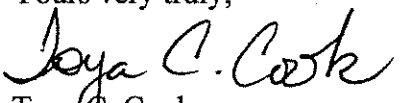
[1]Please note that section 14(f) of the act, added by the 71st Legislature in 1989, chapter 1248, section 18 provides in part that "exceptions from disclosure under this Act do not create new privileges from discovery." Accordingly, the *Hobson* court's apparent use of section 3(a)(8) as a basis for the "law enforcement privilege" is no longer valid.

Because 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,



Toya C. Cook
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Opinion Committee

TCC/GCK/jmn

Ref.: ID# 19962
ID3 20615

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