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TEXAS DEPARTMENT OF PUBLIC SAFETY
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RQ-S

December 20, 1990

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COMMISSIONERS

The Honorable Jim Mattox
Attorney General of Texas
Open Government Section
Supreme Court Building
Austin, Texas

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DEC 27 90

Opinion Committee

RE: Open Records Request

Dear General Mattox:

Pursuant to section 7 of the Texas Open Records Act, Article 6252-17a, V.T.C.S., the Texas Department of Public Safety requests a decision as to whether certain information is exempt from public disclosure under section 3(a)(8) and 3(a)(1) of the Act.

Attached as Exhibit A is a copy of a letter from David C. Rains. Mr. Rains asks to see several items, which are part of an active and open criminal investigation into the deaths of four members of a family who died in their home on March 4, 1990, in Buda, Hays County. You have previously issued an opinion on another aspect of this case in JM-1202 (1990).

The requestor had previous spoken with Lt. Colonel James Wilson, Assistant Director of the Department of Public Safety, in person and by telephone in an attempt to discuss certain aspects of the investigation. It appears to us that the main thrust of the request is to speak with our investigators about pieces of evidence in order to receive an explanation and interpretation of the items. However, in the event that this written correspondence may be taken to have triggered the requirements of the Open Records Act, we are asking for a decision as to whether the department may withhold the information from public disclosure.

The Assistant Director of DPS was on leave from December 5, 1990 through December 9, 1990. He returned to his office on December 10, 1990 for a period of around 3 - 4 hours, at which time he was off work until December 13, 1990. December 13, 1990 was the first time he actually saw the letter. Since the letter appeared to be directed to Mr. Wilson in an unofficial capacity and purported to be an informal note, it was placed with correspondence of a lower priority.

The Department submits that even though this request to you is not within the time limit prescribed by Section 7 of the Open Records Act, the Department can show a compelling reason to withhold the information at issue. Assistant Commander of the Texas Ranger Service, Captain Maurice Cook, is in charge of the investigation into the four deaths in Hays County. He is familiar with all aspects of this case and has made the determination that release of the information would seriously hamper and jeopardize the investigation of these deaths. These deaths have received a good deal of publicity and speculations are rampant. Maintaining

confidentiality of the materials is a compelling and crucial factor in the successful conclusion of the case.

Information is still being gathered and received in this case, and all leads are being actively and persistently followed up on. Requiring disclosure of materials would be contrary to a long line of prior decisions and cases on the law enforcement exception to public disclosure.

The court 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), held:

This constitutional right of access to information should not extend to such matters as a synopsis of a purported confession, officers' speculations of a suspect's guilt, officers' views as to the credibility of witnesses, statements by informants, ballistics reports, fingerprint comparisons, or blood and other laboratory tests. To open such material to the press and public in all cases might endanger the position of the State in criminal prosecutions by the use of such materials to the disadvantage of the prosecution. [at p. 187]

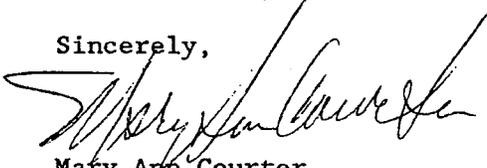
Attorney General Decisions from ORD No. 127 (1976) through the present have consistently exempted information from disclosure when they concerned active files of law enforcement records. See, for example, ORD-340 (1983), ORD-408 (1984), ORD-286 (1981), Attorney General Opinion No. H-861 (1976). In fact, the case law and opinions are so clear on the matter of open law enforcement investigative files, the department submits that it is the type of information that has been previously determined to be within the 3(a)(8) exception. All the lab reports and ballistics tests are directly relevant to these killings, and the photographs and videos referred to are of the crime scene itself and so contain visual recordations of physical evidence.

In addition, the department submits that paragraph numbers 2 and 4 of the letter request physical evidence, which are not documents covered by the Open Records Act.

Also, the A.T.F. trace referred to is a trace done by the Alcohol, Tobacco, and Firearms Agency of the federal government. Any information received from that law enforcement agency is exempt from disclosure under 3(a)(1) of the Act and by a previous decision by you in ORD-561 (1990).

In conclusion, it is the Department's position that all information concerning these four deaths is exempt from public disclosure. If you wish to view any of the evidence at issue, please feel free to contact me. If you need additional information, please feel free to call.

Sincerely,



Mary Ann Courter
Assistant General Counsel

MAC:bif

Attached