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District Attorney
47th Judicial District of Texas

POTTER AND ARMSTRONG COUNTIES
POTTER COUNTY COURTS BUILDING
501 FILLMORE SUITE 1A
AMARILLO, TEXAS 79101

ID# 13372
CBL-604

AREA CODE 806
379-2325

RQ-444

August 23, 1991

Texas Attorney General's Office
% Robert Patterson
P. O. Box 12548, Capitol Station
Austin, Texas 78711-2548

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Opinion Committee

RE: Request for Attorney General's opinion under
the provisions of Art. 6252-17a, §§ 3B(e) and 7 V.A.T.S.

Dear Mr. Patterson:

Enclosed is the request of John Phillip Terry for release of information pursuant to Art. 6252-17a V. A. T. S. In accordance with Sections 3B(e) and 7 of that statute this office is requesting a decision as to whether our office is required to comply with Mr. Terry's request and release the information Mr. Terry desires.

This office takes the position that Mr. Terry's requests, "A" through "E", are specifically excepted from disclosure under Sections 3(a)(3), 3(a)(7), and 3(a)(8) of Article 6252-17a V.A.T.S. for the following reasons:

1. This matter involves the trial of two criminal felony cases in the 320th District Court of Potter County, Texas. Section 3(a)(3) specifically exempts disclosure of any materials relating to litigation of a criminal or civil nature to which the State of Texas may be a party.

Section 3(e) of Art. 6252-17a specifically states that the State of Texas is considered a party to criminal litigation until the applicable statute of limitations had expired or the defendant has exhausted all his state and federal appellate and postconviction remedies. Clearly by this request the petitioner has shown that he has not exhausted all his appellate and postconviction remedies in state and federal court. The offense for which petitioner was convicted in Cause No. 28,035-D was Robbery which alleged to have been committed on or about July 16, 1989. The offense for which petitioner was convicted in Cause No. 28,037-D was Robbery alleged to have been committed on or about July 3, 1989. The

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statute of limitations for both these offenses is five years in accordance with Article 12.01(3) of the Texas Code of Criminal Procedure.

The State will continue to be a party to these two criminal actions until at least July 16, 1994 or until petitioner exhausts all his state and federal remedies, therefore, the State of Texas is not required to release any of the requested information.

2. Additionally most of the material requested by petitioner is work product of either the 47th District Attorney's office or the Amarillo, Texas Police Department and as such is not discoverable under Article 39.14 of the Texas Code of Criminal Procedure or the cases of FRANKLIN v. STATE, 702 S.W. 2d 241 (Tex. Ct. App.- Houston, 1985. N.W.H.); GUILDER v. STATE, 794 S.W. 2d 765 (Tex. Ct. App.-Dallas, 1990. N.W.H.); and VASQUEZ GARZA v. STATE, 794 S.W. 2d 530 (Tex. Ct. App.-Corpus Christi, 1990. N.W.H.).
3. The State of Texas would also direct the Attorney Generals office to the provisions of Article 1, Section 30 of the Texas Constitution which absolutely prohibits the disclosure of certain information regarding victims in criminal cases.
4. The State's position regarding petitioner's request for information "F" is that this information is a public record obtainable through a request of the Potter County District Clerk's office and as such the 47th District Attorney's office does not have the responsibility to disclose this information.

For the reasons set out above the 47th District Attorney respectfully requests a decision in the matter in accordance with Article 6252-17a V.A.T.S.

Sincerely,

DANNY HILL
47th District Attorney



Michael D. Meredith
Assistant District Attorney

cc.

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