



The Attorney General of Texas

November 3, 1977

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Honorable Lee Holt
City Attorney
City of Dallas
Dallas, Texas

Open Records Decision No. 181

Re: Whether a report of an investigation into an arrest allegedly involving police misconduct is public under the Open Records Act.

Dear Mr. Holt:

You have requested our decision as to whether a report of an investigation into the arrest of four juveniles and into alleged police misconduct is public under the Open Records Act, article 6252-17a, V.T.C.S.

You state that, on February 22, 1976, during the course of a political rally at Weiss Park in Dallas, a confrontation occurred between two officers of the Dallas Police Department and a group of juveniles, resulting in the summoning of four other officers and the arrest of four of the juveniles. Shortly thereafter, a member of the Dallas City Council charged that one of the officers had acted improperly and demanded an investigation of the incident, as a result of which the officer was found not to have acted improperly. A citizen now seeks disclosure of all documents pertaining both to the original arrests and to the subsequent investigation.

The first type of information at issue consists of four documents entitled "Park Policeman's Radio and Special Report." Each is a routine report submitted by an officer involved in the incident, and each furnishes information such as offense committed, location of crime, name of officers, and a detailed description of the offense. These reports contain only such information as the courts have held to be available to the public as "first page offense report" information under section 3(a)(8) of the Open Records Act, which excepts

records of law enforcement agencies that deal with the detection and investigation of crime and the internal records and notations of such law enforcement agencies

which are maintained for internal use in matters relating to law enforcement.

Houston Chronicle Publishing Co. v. City of Houston, 531 S.W.2d 177, 186-187 (Tex. Civ. App. -- Houston [14th Dist.] 1975), writ ref'd n.r.e., 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). Thus, unless some other provision of the Open Records Act excepts these reports, they must be deemed to constitute public information.

Section 3(a)(1) of the Open Records Act provides an exception for

information deemed confidential by law, either Constitutional, statutory, or by judicial decision.

Section 51.14 of the Family Code, dealing with juvenile records, provides, in pertinent part:

(d) Except for files and records relating to a charge for which a child is transferred under Section 54.02 of this code to a criminal court for prosecution, the law-enforcement files and records are not open to public inspection nor may their contents be disclosed to the public, but inspection of the files and records is permitted by:

(1) a juvenile court having the child before it in any proceeding;

(2) an attorney for a party to the proceeding; and

(3) law-enforcement officers when necessary for the discharge of their official duties.

In Attorney General Opinion H-529 (1975) at 3 we found that section 51.14 did not preclude the release of "general statistical data which provides no real opportunity for identification of the juvenile offender. . . ." Far from the anonymous statistical information discussed in Attorney General Opinion H-529, we believe the first four detailed reports constitute the type of information which the Legislature intended to be excepted from disclosure by section 51.14 of the Family Code and, thus by section 3(a)(1) of the Open Records Act.

The next six documents consist of written statements to the chief of police from each of the six officers involved in the incident, and prepared in connection with the police department's investigation into the matter. All of these statements either identify the juveniles by name or provide other information which would furnish a basis for their possible identification. In addition, they were prepared in response to an internal investigation regarding allegations of police misconduct rather than as routine offense reports. See Open Records Decision No. 106 (1975). We believe, therefore, that, on the basis of sections 3(a)(2) and 3(a)(1), these six statements are not required to be released.

Another group of documents consists of medical reports and insurance claims relating to Officer Gonzales, who was injured in the disturbance. Much of this information, such as the results of physical examinations and laboratory tests, is excepted from public disclosure under section 3(a)(2) of the Open Records Act, which excepts

information in personnel files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. . . .

See Attorney General Opinion H-90 (1973). Cf. Industrial Foundation of the South v. Texas Industrial Accident Board, 540 S.W.2d 668, 686 (Tex. 1976) (information concerning nature of injuries might be confidential within privacy concept under section 3(a)(1)). Disclosure of the remainder of these documents cannot be deemed, however, to constitute an unwarranted invasion of Officer Gonzales' privacy and must therefore be disclosed. We have marked those items which may be withheld.

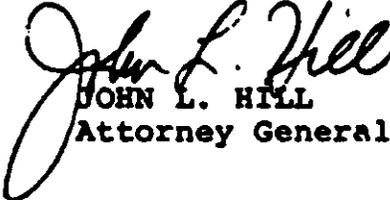
As to the memorandum, dated March 5, 1976, from the captain of the park police to the director of the city parks and recreation department, it is our opinion that it is basically an evaluation of the conduct of Officer Gonzales and, as such, is excepted from disclosure by section 3(a)(2). See Open Records Decision Nos. 168 (1977); 133, 129 (1976); 117, 115, 110, 102, 90, 86, 82, 81, 71, 68 (1975); 55, 20 (1974).

The next document is a memorandum, dated March 4, 1976, from Officer Gonzales to the director of the department of parks and recreation regarding the officer's conduct during the incident in question. No portion of this report would furnish a basis for identification of any of the juveniles involved. In our opinion, it is subject to public disclosure.

Another group of documents consists of 15 written statements of witnesses to the incident, including the four arrested juveniles. The identification and description of witnesses, together with their statements, is specifically excepted from disclosure under section 3(a)(8). Houston Chronicle Publishing Co. v. City of Houston, supra; Open Records Decision No. 127 (1976). Accordingly, none of these documents need be disclosed, nor need the identity of the witnesses be revealed.

The final group of documents about which you inquire is a series of memoranda to and from various city and police officials requesting and supplying information regarding the incident. The first of these, a letter dated February 23, 1976, from the assistant director of the parks and recreation department, should be disclosed, with the exception of two sentences, which we have marked, which might tend to identify the juveniles, and which discuss the action taken regarding their activities. The next two memoranda, dated February 24, 1976, and written by the captain of park police, should be disclosed with the exception of the references to the juveniles. The fourth and sixth items of this series, both dated February 27, 1976, relate basically to the identification of witnesses, and may be withheld. The fifth item, a letter from the city council member who demanded the investigation to the director of the parks and recreation department, and the eighth, his reply thereto, contain no excepted information and should be disclosed. The seventh document, dated March 2, 1976, is a summary of the incident written by the director of the parks and recreation department to members of the parks and recreation board, and is disclosable, with the exception of the references to the juveniles. Finally, the ninth item, dated March 2, 1976, a summary of events written by the director of the parks and recreation department, is disclosable.

Very truly yours,


JOHN L. HILL

Attorney General of Texas

APPROVED:


DAVID M. KENDALL, First Assistant

A handwritten signature in cursive script that reads "Robert Heath". The signature is written in dark ink and is positioned above a horizontal line.

**C. ROBERT HEATH, Chairman
Opinion Committee**

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