



THE ATTORNEY GENERAL
OF TEXAS

JIM MATTOX
ATTORNEY GENERAL

August 29, 1990

Mr. Marion E. Williams, Jr.
City Prosecutor
City of Beeville
P.O. Drawer 250
Beeville, Texas 78104-0250

OR90-406

Dear Mr. Williams:

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# 9676.

The Beeville Police Department received an open records request for all records pertaining to the custodial death of a particular inmate in the Beeville Municipal Jail. Because the city did not request a decision from this office within ten days of receipt of the open records request, you inquire as to who is entitled to determine pursuant to section 7 of the act whether a "previous determination" governs a current open records request. You also indicate that, because the city received notice from an attorney representing the decedent's mother "in a possible claim against the City" approximately twenty-two months ago, the requested information relates to reasonably anticipated litigation and so is protected from required public disclosure pursuant to section 3(a)(3).

In Houston Chronicle Publishing Co. v. Mattox, 767 S.W. 2d 695, 698 (Tex. 1989), the supreme court held:

The [Open Records] Act does not require a previous determination on the specific piece of information; it allows the Attorney General to explicitly refuse to render a decision if he decides that a previous determination has been made regarding the category of information to which the request belongs. (Emphasis added.)

We note that the supreme court is silent as to whether a governmental body may independently decide whether a

"previous determination" applies to requested information. You appear, however, to have made a good faith determination, based on prior rulings of this office, that the requested information is in fact protected from public disclosure pursuant to section 3(a)(3). See, e.g. Open Records Decision No. 346 (1982); but see Open Records Decision No. 511 (1988) (copy enclosed). We also note that some of the requested information may be deemed confidential by article 49.18 of the Code of Criminal Procedure. See Open Records Decision No. 521 (1989) (copy enclosed).

Although no lawsuit has yet been filed against the city with regard to the custodial death, you may withhold the requested information until the statute of limitations has run or, in the event that a lawsuit is timely filed, until the information is released to the prospective plaintiff during discovery. Please note, however, that any information previously released to the plaintiff or her attorney would not come under the protection of section 3(a)(3) and must, therefore, be released at this time. Cf. Open Records Decision No. 349 (1982).

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 refer to OR90-406.

Yours very truly,



Jim Moellinger
Assistant Attorney General
Opinion Committee

JM/RWP/le

Ref.: ID# 9676

Enclosures: Open Records Decision Nos. 521 and 511

cc: Dan Malone
Staff Writer
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