



THE ATTORNEY GENERAL
OF TEXAS

JIM MATTOX
ATTORNEY GENERAL

August 30, 1990

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

OR90-416

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# 8438.

The Harris County District Attorney received a request from an inmate for any investigative reports concerning his conviction. The requestor had filed a letter of complaint with your office, contending he had been wrongfully prosecuted. He received a reply from your office that mentioned "an investigation" of his complaint that concluded that he had been accorded a fair trial and was justly convicted. This response led the requestor to believe that your office conducted an investigation. He seeks access to "documents containing findings of facts and conclusions of law in regards to the investigation..." The requestor also seeks the names of individuals consulted in the "investigation," the name of the appellant attorney appointed to represent him on appeal, "copies of fact in direct regards to this investigation that was conducted," and copies of disciplinary reports and investigations relating to a prosecutor in your office, against whom the requestor has filed a civil suit.

You indicate that your office is unaware of any disciplinary reports or investigations against the prosecutor named by the requestor, that your files do not contain any "findings of fact and conclusions of law" as sought by the requestor, and that your files do not reflect the identity of any attorney appointed to represent the requestor on appeal. You submitted to this office as responsive to the requestor's request a copy of the police offense report for the offense for which the requestor was

prosecuted. You seek to withhold this offense report from disclosure under sections 3(a)(3) and 3(a)(8) of the act. You claim that section 3(a)(3) applies to the offense report because the requestor has filed appeals from his convictions that are pending and because of his suit against the prosecutor.

You may wish to seek clarification from the requestor concerning his request. A governmental body may ask for a clarification of a request, making a good faith effort to advise the requestor of the type of documents available so that the requestor may clarify or narrow the request. See Open Records Decision No. 87 (1975). In this case, the requestor appears to seek the results of an investigation that he believes was conducted by your office concerning his conviction. If an investigation report exists that you seek to withhold, it should be submitted to this office for review. If no such report exists, the requestor should be so advised.

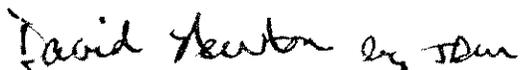
We have reviewed the information you have submitted and considered the exceptions you claimed. Section 3(a)(3) excepts from disclosure information relating to pending or reasonably anticipated litigation involving a governmental entity or its officers or employees.

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), the court held that certain information compiled by law enforcement agencies relating to arrests was not excepted from disclosure by section 3(a)(8) of the Open Records Act. This decision was made with the knowledge that many, if not most, of the arrests would result in criminal litigation in which the state or political subdivision would be a party. Thus, we do not believe that information declared to be public by the court may be withheld pursuant to section 3(a)(3) by virtue of the fact that litigation relating to the offense is involved. It is inherently public and must be released according to the decision in Houston Chronicle decision. The categories of information that may and may not be withheld pursuant to that decision were summarized in Open Records Decision No. 127 (1976) (copy enclosed). Section 3(a)(8) would except all but the first page.

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 OR90-416.

Yours very truly,

A handwritten signature in cursive script that reads "David A. Newton by DAN".

David A. Newton
Assistant Attorney General
Opinion Committee

DAN/le

Ref.: ID# 8438, 8521, 8516

Enclosure: Open Records Decision No. 127.

cc: Mr. Eric Esteves
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