



THE ATTORNEY GENERAL
OF TEXAS

JIM MATTON
ATTORNEY GENERAL

September 11, 1990

Mr. Tom Bailey
Assistant Criminal District
Attorney - Civil Section
Bexar County
300 Dolorosa, Suite 4049
San Antonio, Texas 78205-3030

OR90-441

Dear Mr. Bailey:

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# 10517.

You state that you have received a request for a copy of the final report on the Bexar County Medical/Psychiatric Department, prepared by an outside consultant. You contend that the final report is excepted from public disclosure under sections 3(a)(3) and 3(a)(11) of the Open Records Act.

We have considered the exceptions you claimed, and have reviewed the documents at issue. We have concluded that the section 3(a)(3) exception does not apply to any portion of the Final Report save the paragraphs on pages 19 and 20 under the heading "Concerns Expressed by Custody Administration." For information to be excepted from public disclosure under this section, litigation must be pending or reasonably anticipated and the information must relate to that litigation. See Open Records Decision No. 551 (1990). Of the litigation referred to in your letter, these conditions are met only in regard to the Mendiola case, and only to the extent of the above-mentioned paragraphs. The report is too remotely related to the Garay litigation to meet the section 3(a)(3) test, and you have failed to show that litigation is either pending or reasonably anticipated in the Devonish case. See Open Records Decision Nos. 551 (1990); 429 (1985); 222 (1979).

You also claim that the report containing advice, opinions, and recommendations solicited by the County Commissioners for use in formulating and evaluating policies in the Medical/Psychiatric Department, comes under the

section 3(a)(11) exception. However, section 3(a)(11) allows exception only of those portions of the Report consisting of such advice, opinions, and recommendations. Facts and written observations of facts and events must be severed when possible and disclosed. See Open Records Decision No. 429. We have marked the report sections that may be withheld under section 3(a)(11).

In conclusion, you may except from disclosure the paragraphs on pages 19 and 20 under "Concerns Expressed By Custody Administration," as well as the portions we have marked as being within the section 3(a)(11) exception. 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 OR90-441.

Yours very truly,



Susan Garrison
Assistant Attorney General
Opinion Committee

SG/FS/le

Ref.: ID# 10517

Enclosure: Open Records Decision Nos. 551, 429, 222
Documents Submitted