



THE ATTORNEY GENERAL
OF TEXAS

JIM MATTOX
ATTORNEY GENERAL

October 15, 1990

Honorable Iris J. Jones
City Attorney
City of Austin
P.O. Box 1088
Austin, Texas 78767-8828

Re: OR90-463

Dear Ms. Jones:

Thank you for your letter of October 15, 1990, in which you request that we reconsider OR90-463. In that decision we determined that the City of Austin could not withhold certain information under sections 3(a)(3) and 3(a)(8) of the Open Records Act.

Because we did not consider all aspects of sections 3(a)(3) and 3(a)(8) that you raised in your original letter, we withdraw OR90-463.

Yours very truly,

A handwritten signature in cursive script that reads "Sarah Woelk".

Sarah Woelk
Assistant Attorney General
Opinion Committee

SW/le

Ref: OR90-463

cc: David H. Donaldson, Jr.
Graves, Dougherty, Hearon & Moody
P.O. Box 98
Austin, Texas 78767



THE ATTORNEY GENERAL
OF TEXAS

JIM MATTOX
ATTORNEY GENERAL

October 2, 1990

Honorable Iris J. Jones
City Attorney
City of Austin
P.O. Box 1088
Austin, Texas 78767-8828

OR90-463

Dear Ms. Jones:

On July 2, 1990, you submitted for our review an open records request from a local television station for the report of the Austin Police Department Internal Affairs Department in regard to Officer Bubba Cates.

An attorney for the television station brought to our attention that the submission to our office had been made on a Monday, the 11th day after the request was made to the City of Austin. Consequently, we set up a file, RQ-2082, in regard to the legal issue of how the 10-day provision in section 7(a) is to be calculated if the 10th day falls on a weekend.

In reviewing the documents, we have determined that you must make the report available regardless of whether you met the 10-day deadline.¹

1. It has come to our attention that an appeal is pending in the Austin Court of Appeals to determine the consequence of failing to request an attorney general opinion within 10 days of receiving an open records request. Hancock v. State Board of Insurance, No. 3-89-00252-CV (Court of Appeals of the Third Judicial Dist. of Texas, Jan. 12, 1990).

You first claim that you may withhold the report under section 3(a)(3) of the Open Records Act, which provides that a governmental body may withhold:

information relating to litigation of a criminal or civil nature and settlement negotiations, to which the state or political subdivision is, or may be, a party, or to which an officer or employee of the state or political subdivision, as a consequence of his office or employment, is or may be a party, that the attorney general or the respective attorneys of the various political subdivisions has determined should be withheld from public inspection.

We assume that you are suggesting that the report in question is information relating to criminal litigation to which a city employee is a party. In order for section 3(a)(3) to apply in that context, however, the litigation would have to be a consequence of the employee's employment. Although the criminal activities that Officer Cates is alleged to have conducted could have been facilitated by his status as a police officer, we do not believe that such activities could be considered a "consequence" of his employment as a police officer. We conclude, therefore, that you may not withhold the report under section 3(a)(3).

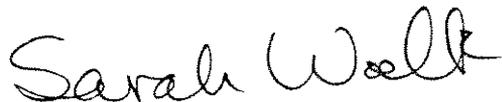
You also raise section 3(a)(8), which would allow you to withhold

records of law enforcement agencies and prosecutors that deal with the detection, investigation, and prosecution of crime and the internal records and notations of such law enforcement agencies and prosecutors which are maintained for internal use in matters relating to law enforcement and prosecution.

In order to withhold records under that section a governmental body must show that release of the records would unduly interfere with law enforcement. Open Records Decision No. 434 (1986). There is no general exception for files regarding internal affairs investigations. You have not explained, nor is it apparent on the face of the documents how the release of the requested information will unduly interfere with law enforcement. Accordingly, the requested information may not be withheld under section 3(a)(8).

If you have any questions regarding this ruling, please refer to OR90-463.

Very truly yours,



Sarah Woelk
Assistant Attorney General
Opinion Committee

SW/le

Ref: ID# 9987 (RQ-2082)
ID# 10269
ID# 10104
ID# 10132
ID# 10145
ID# 10387
ID# 10398
ID# 10403
ID# 10437
ID# 10582

Enclosures: Documents Submitted

cc: David H. Donaldson, Jr.
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