



THE ATTORNEY GENERAL  
OF TEXAS

JIM MATTOX  
ATTORNEY GENERAL

October 11, 1990

Mr. Charles E. Griffith, III  
Deputy City Attorney  
City of Austin  
P.O. Box 1088  
Austin, Texas 78767-8828

OR90-483

Dear Mr. Griffith:

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# 10458.

The City of Austin received an open records request for the "full investigation report" of a shooting incident at the Austin State Hospital where an individual was shot by Austin police officers. You contend that the requested information comes under the protection of sections 3(a)(3) and 3(a)(8) of the Open Records Act.

In your letter to this office you state:

Assistant City Attorney Robert P. Rose talked to [the requestor] in an attempt to determine the scope of his request. [The requestor] said he wanted all materials held by the Austin Police Department concerning the incident. [The requestor] was asked if the City was going to be the subject of litigation resulting from this incident. In effect, [the requestor] responded that he was investigating the incident and, upon the completion of his investigation, a decision would be made concerning the initiation of a lawsuit.

It appears from the above statement that the assistant city attorney may have inquired as to the requestor's purpose for seeking the report of the investigation. We note, however, that section 5(b) of the Open Records Act provides in pertinent part:

Neither the officer for public records nor his agent shall make any inquiry of any person who applies for inspection or copying of public records beyond the purpose of establishing proper identification and the public records being requested. . . .

V.T.C.S. art. 6252-17a, § 5(b). See also Attorney General Opinion H-242 (1974) (Open Records Act does not permit analysis of the requestor's motive for requesting information in determining the basic question of disclosability). Despite the language of section 5(b), this office will nevertheless consider the exceptions you raise because 1) this office is unable to make factual determinations concerning the conversation between the requestor and assistant city attorney and 2) no court has created a remedy for violations of section 5(b).

Given the circumstances as outlined above, it is reasonable for the city to anticipate litigation with regard to the shooting incident; you may therefore withhold the entire report pursuant to section 3(a)(3). See Open Records Decision No. 551 (1990). Your arguments regarding the applicability of section 3(a)(8) need not, therefore, be considered at this time.

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 OR90-483.

Yours very truly,



Susan Garrison  
Assistant Attorney General  
Opinion Committee

SG/RWP/le

Ref.: ID# 10458, 10450

cc: Steve Gibbins  
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