



THE ATTORNEY GENERAL  
OF TEXAS

JIM MATTON  
ATTORNEY GENERAL

October 22, 1990

Ms. Elaine Piper  
Office of the City Attorney  
City of El Paso  
2 Civic Center Plaza  
El Paso, Texas 79999

OR90-510

Dear Ms. Piper:

Your predecessor, Ms. Victoria Witt, asked 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# 6907.

The City of El Paso received a request from a member of the media for copies of "any reports, letters, memoranda, written statements, or documents connected with 26 incidents in which, allegedly criminal violations of civil rights were committed by members of the El Paso Police Department." You released reports of several closed internal affairs investigations of such incidents. You have sent us reports of two internal investigations of such incidents, identified as IA 87-46 and IA 87-72, which you state are representative of the other reports you wish to withhold. You claim that portions of each file are excepted from disclosure by sections 3(a)(1), 3(a)(8), and 3(a)(11) of the Open Records Act. You do not raise section 3(a)(3) with respect to the two files, although you state that you wish to reserve it for other files that are related to pending litigation.

You state that the first document in each case file is the case summary written by the Internal Affairs investigative officer for the police chief to use in disciplining officers, and for the city attorney to use in administrative hearings and litigation. You claim that these reports are considered attorney work product, excepted from disclosure by section 3(a)(1). Open Records Decision No. 429 (1985) deals with the work product privilege as follows:

The Rules of Civil Procedure protect from discovery an attorney's work product. Tex. R. Civ. Proc. 166b.3(a). The work product rule applies to material prepared by an

attorney in anticipation of litigation. . . . The work product doctrine thus merely represents one aspect of section 3(a)(3) information relating to litigation. We have determined that none of the requested information has been shown to be "information relating to litigation" within section 3(a)(3); therefore, none of it is protected as material prepared by an attorney in anticipation of litigation.

Open Records Decision No. 429 (1985) at 4. Since you do not claim section 3(a)(3), for these records, there is no basis for claiming the work product privilege.

You also claim that the case summaries should be excepted from public disclosure in their entirety under section 3(a)(11) since they consist of the investigator's summary of his own case and are "advice, opinion, or recommendations." We have read the summaries, which are titled "supplementary report." They are summaries of factual information and are themselves factual. The summaries do not contain "advice, opinion, or recommendations." A factual narrative of events is not excepted from disclosure by section 3(a)(11). Open Records Decisions Nos. 354, 350 (1982).

However, you also state that the list of departmental rules and regulations allegedly violated by the officer represents the investigator's opinion as to the relevant rules, and are not necessarily the rules that the attorney who draws up the charges will rely on. This list may be withheld from disclosure on the basis of section 3(a)(11) of the act; the remainder of the case summaries is not excepted by section 3(a)(11). See Open Records Decision No. 239 (1980) (college president's recommendations regarding tenure for individual professors excepted by section 3(a)(11)).

You claim that arrest history information included in the report and summarized in the case history is excepted from disclosure by section 3(a)(1) as criminal history information. We agree that this information may be withheld. Attorney General Opinion JM-1224 (1990); Open Records Decision No. 565 (1990). In addition, information received from the Federal Bureau of Investigation that would be confidential under Open Records Decision No. 561 (1990) is also excepted from disclosure by section 3(a)(1). One sentence in the supplementary report on case IA 87-72 has been marked as excepted pursuant to Open Records Decision No. 561.

The medical records contained in IA87-46 are excepted from disclosure by section 3(a)(1), as they are confidential under section 5.08 of article 4495b, V.T.C.S., the Medical Practices Act. You claim that the medical information relating to Officer Reyes' injury is also excepted by the Medical Practices Act. This information includes a one-page record signed by a doctor. This record is excepted from disclosure by the Medical Practices Act. The remaining documents were prepared by Officer Reyes and other members of the department. Since they were not prepared by a doctor or under his supervision, they are not within section 5.08 of article 4495b, V.T.C.S.

You next suggest that the non-voluntary statements made by accused officers during the investigation are protected by section 3(a)(1) as information deemed confidential by law, specifically the Supreme Court decisions in Garrity v. New Jersey, 385 U.S. 493 (1967) and Gardner v. Broderick, 392 U.S. 273 (1968). These cases, which involved investigations of peace officer misconduct, safeguard the public employee's constitutional right against self-incrimination. In each case, police officers who invoked the privilege against self-incrimination could be discharged for refusing to answer questions. The Supreme Court decided that statements taken from the officers were coerced confessions, because the officers were given a choice between forfeiting their jobs or incriminating themselves, and that the statements therefore could not be admitted as evidence in a criminal prosecution. Nothing in the Supreme Court's opinions indicates that such statements cannot be disclosed to the public under a state open records statute. Information about misconduct and misappropriation of public funds by public employes has been held to be available to the public under the Texas Open Records Act. See Open Records Decision 470 (1987) (discussing privacy).

Finally, you claim that the materials received from the sheriff's department in IA87-46 are excepted by section 3(a)(8) and 3(a)(11). We have examined these materials and find nothing excepted by section 3(a)(11). The jail roster and attached page are excepted by section 3(a)(8). Open Records Decisions Nos. 413 (1984); 127 (1976). None of the remaining information received from the sheriff is excepted by section 3(a)(8).

We have marked the information that is excepted from disclosure. The remaining information is available to the requestor.

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 OR90-510.

Yours very truly,



Susan Garrison  
Assistant Attorney General  
Opinion Committee

SG/le

Ref.: ID# 6907, 6855, 7348

Enc: ORD Nos. 127, 239, 350, 354, 413, 429, 470, 561, & 565;  
Attorney General Opinion JM-1224;  
Marked Documents

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