



THE ATTORNEY GENERAL
OF TEXAS

JIM MATTOX
ATTORNEY GENERAL

October 25, 1990

Mr. Paul K. Pearce, Jr.
Assistant City Attorney
City of Irving
P. O. Box 152288
Irving, Texas 75015-2288

OR90-517

Dear Mr. Pearce:

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# 10804.

The Irving Police Department received an open records request for

all tape recordings, memorandum [sic], correspondence, or any other written documents relating to the trip taken to Toronto, Ontario, Canada, by three officers, Douglas F. Daman, Captain David Hanks and Sgt. Jimmy L. Alford and or any other officer not previously mentioned. (Emphasis added.)

You have submitted to this office as responsive to the request two reports, one a "draft" of the other, detailing certain officers' trip to Toronto and a compilation of newspaper articles concerning a murder investigation in Canada. We note at the outset that the finished report ends with the statement "This will conclude the portion in which Doug Daman and Captain David Hanks went to Toronto, Canada." If there are in fact any other records that directly relate to the officers' trip to Canada, those records are now presumed to be public. See Open Records Decision Nos. 197, 195 (1978).

You first contend that the information submitted to this office comes under the protection of section 3(a)(11) and the attorney-client privilege aspect of section 3(a)(1) because they were compiled by an attorney in order to provide legal advice to the City of Irving. We note, however, that the information in question is purely factual

in nature and does not contain any legal advice or opinion. This type of information does not come under the protection of either section 3(a)(11), see Open Records Decision No. 450 (1986), or the attorney-client privilege. See, e.g., Open Records Decision No. 230 (1979) at 3. See generally Open Records Decision No. 462 (1987) at 9-11 (copy enclosed).

We also note that the requested information does not fall within the protection of the "informer's privilege" aspect of section 3(a)(1) of the act. Because part of the purpose of the informer's privilege is to prevent retaliation against informants, the privilege does not apply when the informant's identity is known to the party complained of. See Open Records Decision No. 208 (1978). The requestor has informed this office that the "informant" revealed to the requestor her intention to cooperate with the department, thereby waiving the privilege. We have, however, marked small portions of the report that come under the protection of common-law privacy. See Industrial Found. of the South v. Texas Indus. Accident Bd., 540 S.W.2d 668 (Tex. 1976), cert. denied 430 U.S. 931 (1977).

You next contend that section 3(a)(3) excepts this material from required disclosure because the release of the information would "impair Chief Newman's, as well as the City's, ability to defend themselves" in pending litigation. To secure the protection of section 3(a)(3), a governmental body must first demonstrate that a judicial or quasi-judicial proceeding is pending or reasonably anticipated. Open Records Decision Nos. 452 (1986); 360 (1983). Further, the governmental body's attorney must show that the requested material relates to the litigation. See Open Records Decision No. 323 (1982).

This office has reviewed the plaintiff's complaint in the lawsuit filed in federal court. You have not demonstrated, nor is it apparent to this office, how the requested information relates to the issues in the lawsuit; consequently you may not withhold this information pursuant to section 3(a)(3).

Finally, you contend that the requested information comes under the protection of section 3(a)(8) because it was gathered during the course of a criminal investigation. The Irving police officer heading the investigation in Toronto has stated to this office that the criminal investigation is no longer being pursued. You have not demonstrated to this office how the information in question relates to any criminal activity in Texas or how the release of the

requested information would unduly interfere with law enforcement efforts. See Open Records Decision No. 216 (1978). This office has no basis for determining that this information should be withheld pursuant to section 3(a)(8). The reports and newspaper compilations must be released in their entirety.

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 OR90-517.

Yours very truly,



Jim Moellinger
Assistant Attorney General
Opinion Committee

JM/RWP/le

Ref.: ID# 10804
ID# 10722
ID# 10897

Enclosures: Open Records Decision No. 462
Marked Documents

cc: William C. Dear
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