



THE ATTORNEY GENERAL
OF TEXAS

JIM MATTOX
ATTORNEY GENERAL

December 3, 1990

Mr. Paul G. Stuckle
Police Legal Advisor
Assistant City Attorney
City of Fort Worth
350 W. Belknap
Fort Worth, Texas 76102

OR90-564

Dear Mr. Stuckle:

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# 10947.

The City of Fort Worth received an open records request for "a 96-page report believed to have been prepared in 1988 by officers of the Fort Worth Police Department on drug-related matters in the city" that "seems to be the basis for several Dallas Morning News stories that have been produced over the last several months." The requestor has apparently described the report sufficiently for your office to identify the information he seeks. Although you initially contended that the report at issue comes under the protection of sections 3(a)(1), 3(a)(3), and 3(a)(8), you have confirmed that all law enforcement investigations have been concluded and that no criminal prosecution regarding the subject matter of the report is anticipated at this time. Consequently, this office will consider only your claims regarding the informer's privilege aspect of section 3(a)(1).

You contend that the informer's privilege protects from public disclosure the identities of all "confidential informants" and their statements. The informer's privilege aspect of section 3(a)(1) protects the identity of persons who report violations of the law. The privilege also protects the contents of communications to the extent they reveal the identity of the informant. Roviaro v. United States, 353 U.S. 53, 60 (1957).

Two reasons for withholding names and statements of informants, despite the absence of a criminal prosecution, are that disclosure might either (1) subject the witnesses to intimidation or harassment or (2) harm the prospects of

future cooperation between informants and law enforcement authorities. Open Records Decision No. 252 (1980). Where it is apparent from an examination of the facts of a particular case that disclosure might either subject the informants to possible intimidation or harassment, or harm the prospects of future cooperation between informants and law enforcement officers, the names and statements of informants may be withheld. Id.

The informants' statements at issue contain reports of criminal activity and are of such a nature that the informants' identities could be ascertained by their content. Also, it is clear to this office that in this instance the two law enforcement concerns addressed above weigh heavily towards the protection of the informants' identities and the transcripts of their statements.

We note, however, that several individuals who may have been confidential informants have publicly come forward by identifying themselves and allowing themselves to be quoted by the press. Because part of the purpose of the 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). Consequently, if any of the confidential informants who volunteered statements during the criminal investigation have identified themselves through newspaper accounts about the investigation, thereby themselves waiving the privilege, those individuals' statements must be released. You may withhold any other statements in their entirety.

We have marked other information contained in the report that also may tend to identify the informants. The remaining information in the report must, however, be released.

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 OR90-564.

Yours very truly,



Susan Garrison
Assistant Attorney General
Opinion Committee

SG/RWP/le

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Enclosure: Marked documents

cc: Gary Bailey
Reporter
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