



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

December 19, 1990

Mr. Merrill E. Nunn
City Attorney
City of Amarillo
P.O. Box 1971
Amarillo, Texas 79186

OR90-579

Dear Mr. Nunn:

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# 11176.

The Amarillo Police Department [the department] received an open records request from a convicted criminal defendant for records pertaining to the prosecution of his case. You contend that the requested information comes under the protection of sections 3(a)(3) and 3(a)(8) of the Open Records Act.

Section 3(a)(3) of the Open Records Act excepts from required public disclosure:

information relating to litigation of a . . . criminal nature . . . to which the state or political subdivision 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.

Section 3(e) of the act provides:

For purposes of Subsection (a)(3) of this section, the state or a political subdivision is considered to be a party to litigation of a criminal nature until the applicable statute of limitations has expired or until the defendant has exhausted all appellate and postconviction remedies in state and federal court.

You contend that section 3(a)(3) excepts the requested documents because they relate to a possible appeal of the conviction. Because litigation is in this instance "pending" within the meaning of sections 3(a)(3) and 3(e), and because the documents at issue relate to that litigation, these exceptions protect the documents. See, e.g., Open Records Decision No. 469 (1987).

Finally, we assume that none of the information in the records at issue has previously been made available to the requestor. Absent special circumstances, once information has been obtained by all parties to the litigation, e.g. through discovery or by court order, no section 3(a)(3) interest exists with respect to that information. Open Records Decision Nos. 349, 320 (1982). If the requestor has seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 3(a)(3).

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 OR90-579.

Yours very truly,



Susan Garrison
Assistant Attorney General
Opinion Committee

SG/RWP/le

Ref.: ID# 11176

cc: Phillip Jeffery Terry
P.O. Box 36500
Amarillo, Texas 79120-6500