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ATTORNEY GENERAL

Office of the Attorney General  
State of Texas

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

OR91-104

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# 11230.

The Ft. Worth Police Department received an open records request for a copy of two tape recordings concerning an incident that is the subject of an ongoing criminal investigation. One consists of telephone calls to its 911 emergency line; the other contains police dispatcher conversations. You assert the recording of the 911 calls is excepted from required public disclosure by sections 3(a)(1), 3(a)(3) and 3(a)(8) of the Open Records Act. You raise section 3(a)(11) as an exception to the release of the recording of the police radio dispatcher conversations.

We agree that the recording of the 911 calls may be withheld based on section 3(a)(8) of the Open Records Act. Section 3(a)(8) may be invoked to protect information that is relevant to an incident involving criminal conduct that is still under active investigation. Open Records Decision No. 372 (1983). Each of the 911 calls is from an individual present at the scene of a crime either while the incident was taking place, or soon thereafter. Each 911 caller identifies himself and reports information about the incident or the victim of the crime. The identification of witnesses, as well as their statements, is excepted from disclosure by section 3(a)(8). Houston Chronicle Publishing Co. v. City of Houston, 531 S.W.2d 177 (Tex. Civ. App. --Houston [14th Dist.] 1975 writ ref'd n.r.e.); Open Records Decision Nos. 181 (1977), 127 (1976). Therefore, you may withhold the recording of the 911 calls.

We do not agree that the 3(a)(11) exception applies to the recording of the radio dispatcher conversations. Section 3(a)(11) excepts from disclosure

inter-agency or intra-agency memorandums or letters which would not be available by law to a party in litigation with the agency.

This exception was designed to protect from disclosure "advice and opinions on policy matters and to encourage frank and open discussion within the agency in connection with its decision-making processes." Austin v. City of San Antonio, 630 S. W. 2d 391, 394 (Tex. App. - San Antonio 1982, writ ref'd n.r.e.); See also Attorney General Opinion H-436 (1974), Open Records Decision No. 538 (1990). Factual information which can be severed from advice and opinion cannot not be withheld under section 3(a)(11). Open Records Decision No. 213 (1978). The radio conversations between a police officer and a dispatcher, which are in code, primarily consist of exchanges of information about the location and details of an incident to which the officer is being dispatched. Such conversations do not concern policy matters of the Ft. Worth Police Department. Nor do they contain advice, opinion or recommendation used in the decisional process of the Ft. Worth Police Department. Accordingly, the recording of the radio dispatcher conversations are not protected by section 3(a)(11) and they must 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 OR91-104.

Yours very truly,



Kay Guajardo  
Assistant Attorney General  
Opinion Committee

KHG/lcd

Ref.: ID# 11230

Enclosure: Open Records Decision No. 538 (1990)