



DAN MORALES
ATTORNEY GENERAL

Office of the Attorney General
State of Texas

September 13, 1991

Dr. Kenneth E. Beasley
Chief Administrative Officer
The City of El Paso
Two Civic Center Plaza
El Paso, Texas 79901-1196

OR91-416

Dear Dr. Beasley:

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# 13435.

You have received a request for copies of "any and all documentation, reports, letters, memos or other information regarding all activities and/or complaints in possession of the City-County Health District files and or the files of the City of El Paso Attorney's Office" relating to the harboring of horses which have become nuisances. You claim that most of the requested information is excepted from required public disclosure by sections 3(a)(1), 3(a)(8), and 3(a)(11) of the Open Records Act.

You claim that disclosure of the requested information would compromise the privacy of the complaining parties and that the requested information is thus protected from required public disclosure by section 3(a)(1). Specifically, you maintain that disclosure of their names, addresses, telephone numbers, and the nature of their complaints would infringe upon their privacy interests. In order for information to be brought within the exception for information deemed confidential by common-law privacy interests under section 3(a)(1), the information must (1) contain highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information must be of no legitimate concern to the public. *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). We have considered the exception you claimed and have reviewed the documents submitted to us. We have determined that no part of that information submitted to us is such that may be construed as "highly intimate or embarrassing." Moreover, it is clear from the documents submitted that the names and addresses of the

complainants and the nature of the complaints are already well known to the requesting party. *See generally* Open Records Decision No. 455 (1987) (holding that there is no privacy interest in home addresses and telephone numbers). Accordingly, the requested information may not be withheld under section 3(a)(1).

You also claim that some of the information should be withheld from required public disclosure because release would result in retaliation against the complainants. It is clear from the documented correspondence submitted to us that the identities of the complainants and the nature of their complaints are already known to the requestor. Once the identity of an informer is disclosed to those who would have cause to resent the communication, the informer's privilege is no longer applicable. Open Records Decision No. 202 (1978). Accordingly, you may not withhold the requested information under the informer's privilege.

You claim that the requested information is protected from required public disclosure under section 3(a)(8) as "records of law enforcement agencies that deal with the detection and investigation of crime and the internal records and notations of such law enforcement agencies which are maintained for internal use." Section 3(a)(8) applies only to *criminal* prosecutions. Open Records Decision No. 493 (1988). A agency that is not a law enforcement agency, however, may claim section 3(a)(8) if there exists a reasonable possibility of criminal prosecution. Attorney General Opinion MW-575 (1982). You have communicated to this office that the issue has been resolved at the administrative level, for which no appeal exists. You have not demonstrated that there exists a reasonable possibility of criminal prosecution. Indeed, you assert that up until this point, no one has committed an offense. Thus, until you have demonstrated that criminal prosecution is pending or that a law enforcement agency is presently investigating this matter, you may not invoke a 3(a)(8) exception.

Finally, you assert that some of the requested information is excepted from required public disclosure by section 3(a)(11). Section 3(a)(11) excepts memoranda and letters, but only to the extent that they contain advice, opinion, or recommendation intended for use in the entity's policy making or deliberative process. Open Records Decision No. 462 (1987). On its face, none of the information submitted consists of advice, opinion or recommendation. Accordingly, none of the information may be withheld from required public disclosure under section 3(a)(11).

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

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a published open records decision. If you have questions about this ruling, please refer to OR91-416.

Very truly yours,



Celeste A. Baker
Assistant Attorney General
Opinion Committee

CAB/GK/lcd

Ref.: ID# 13435

Enclosure: Open Records Decision Nos. 202, 493
Attorney General Opinion MW-575

cc: Mr. Stanley H. Steen
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