



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 7, 1991

Mr. Raymundo Lopez
Attorney
Garcia & Lopez
214 West Cano Street
Edinburg, Texas 78539

OR91-495

Dear Mr. Lopez:

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# 13222.

You inform this office that there is currently pending an investigation by the Texas Rangers into allegations that a police officer with the City of Donna sexually assaulted a female prisoner. Subsequent to the raising of these allegations, the city suspended the officer in question, who then, on July 29, 1991, requested through his attorney all information pertaining to his suspension. You inform this office that "[t]hereafter, and without providing the City ample time to respond to the written request . . . the subject officer . . . filed a Petition for Writ of Mandamus on August 1, 1991." Although the officer/requestor originally sought the records at issue pursuant to a perceived special right of access afforded by the City of Donna Personnel Policies Manual, the district court of Hidalgo County denied the officer's petition for writ of mandamus for access to these records. Consequently, this office must determine the extent to which the requestor may view these records under the terms of the Texas Open Records Act.

You state that because of the pending investigation, many of the records coming within the ambit of the request have been transferred to the Texas Rangers, and thus are no longer possessed by city officials. The Open Records Act does not require a governmental body to obtain information not in its possession or to prepare new information in response to a requestor. Open Records Decision No. 445 (1986). You contend that the requested information that the city does possess is

excepted from required public disclosure by sections 3(a)(2) and 3(a)(8) of the Open Records Act.

Section 3(a)(2) protects "information in personnel files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Section 3(a)(2) is designed to protect the personal privacy of *public employees*. We note, however, that section 3B of the Open Records Act provides in part:

(a) A person or the authorized representative of a person has, beyond the right of the general public, a special right of access to and to copies of any records held by a governmental body that contain information relating to the person that is protected from public disclosure by laws intended to protect that person's privacy interests. The fact that the information is deemed confidential by privacy principles under this Act does not grant the governmental body the right to deny access to the person, or the person's representative, to whom the information relates. However, laws and provisions of this Act, other than ones intended to protect that person's privacy interests, may still form the basis for denial of access to the person or the person's representative to whom the information relates.

....

(e) If a governmental body determines that information covered by a special right of access under this section is excepted from disclosure under any other exception under Subsection (a) of Section 3 of this Act, the governmental body shall, before disclosing the information, submit a written request for a decision to the attorney general under the procedures described in Section 7 of this Act. . . .

Consequently, this office need not determine whether any of the information at issue implicates the privacy interests of the suspended police officer because he or his representative would have a special right of access to such private information unless it is otherwise protected from required disclosure under the act. We must therefore address the applicability of other exceptions to required public disclosure.

Although the attorney general will not ordinarily raise an exception that might apply, but that the governmental body has failed to claim (*see* Open Records Decision Nos. 455 (1987) at 8; 325 (1982)), we will raise section 3(a)(1) because the release of confidential information could impair the rights of third parties, and because its improper release constitutes a misdemeanor. *See* V.T.C.S. art. 6252-17a, § 10(e). Section 3(a)(1) of the act protects "information deemed confidential by law, either Constitutional, statutory, or by judicial decision," including the common-law right to privacy. *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

Any information contained in police reports that tends to reveal the identity of a sexual assault victim is protected by the common law right to privacy and must therefore be withheld. Open Records Decision No. 393 (1983). After a careful review of the documents at issue, however, this office was unable to identify any information that tended to identify the assault victim. Consequently, common-law privacy does not protect any of the information here.

We next address your section 3(a)(8) claim. The purpose of section 3(a)(8) is to protect law enforcement and crime prevention efforts by preventing suspects and criminals from using records in order to evade detection and capture. *See* Open Records Decision Nos. 133, 127 (1976). In this regard we note that some of the records submitted to this office have previously been mailed to or otherwise been made available to the officer in question. Absent special circumstances, section 3(a)(8) was not intended to protect information in the hands of both the prosecution and defense. Consequently, you may not withhold Exhibit F pursuant to section 3(a)(8). Additionally, the release of Exhibits C, D, and E would not appear to unduly interfere with the pending criminal investigation and so must also be released. *See Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

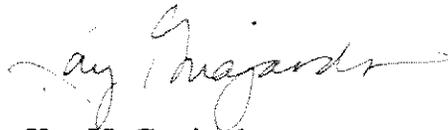
In *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App. - Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976), the court of civil appeals established the guidelines about what constitutes public information contained in pending police investigatory files. The court's holding was summarized in Open Records Decision No. 127, a review of which indicates that information contained on the front page of offense reports is public information. Because the dispatch reports contain the same types of information held to be public in *Houston Chronicle, supra*, these records must be released. You may, however, withhold at this time all witness affidavits pursuant to section 3(a)(8).

See also Open Records Decision No. 397 (1983). For your convenience, we have attached a summary of Open Records Decision No. 127 to the end of this ruling.

To summarize, the city must release to the requestor Exhibits C, D, E, and F. The city may withhold pursuant to section 3(a)(8) all witness statements contained in Exhibit G.

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 OR91-495.

Yours very truly,



Kay H. Guajardo
Assistant Attorney General
Opinion Committee

KHG/RWP/lcd

Ref.: ID# 13222
ID# 13446

Enclosures: Attachment

cc: Mr. Eugenio Ayala
c/o Mr. Mario Ramirez
502 W. University Dr.
Edinburg, Texas 78539
(w/o enclosures)

I. TYPES OF INFORMATION AVAILABLE TO THE PUBLIC

1. Arrestee's social security number, name, aliases, race, sex, age, occupation, address, police department identification number, and physical condition.
2. Offense for which suspect arrested.
3. Identification and description of complainant
4. Location of crime
5. Time of occurrence.
6. Vehicle involved.
7. Property involved
8. Detailed description of offense.
9. Name of arresting officers.
10. Date and time of arrest.
11. Place of arrest.
12. Details of arrest.
13. Description of weather
14. Booking information.
15. Court in which charge is filed.
16. Notation of any release or transfer.
17. Bonding information.
18. Numbers for statistical purposes relating to modus operandi of those apprehended.

II. TYPES OF INFORMATION PROTECTED BY SECTION 3(A)(8) DURING PENDENCY OF CRIMINAL INVESTIGATION

1. Identification and description of witnesses.
2. Synopsis of confession.
3. Officer's speculation as to suspect's guilt.
4. Officer's view of witness credibility.
5. Statements by informants.
6. Ballistics reports.
7. Fingerprint comparisons.
8. Blood and other lab tests.
9. Results of polygraph test.
10. Refusal to take polygraph test.
11. Paraffin test results.
12. Spectrographic or other investigative reports.
13. Personal History and Arrest Record, including
 - A. Identifying numbers (such as TDC numbers).
 - B. Physical description with emphasis on scars and tattoos.
 - C. Marital status and relatives.
 - D. Mugshots, palm prints, fingerprints, and signature.
 - E. Chronological history of any arrests and disposition.