



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 22, 1991

Chief Thomas Windham
Fort Worth Police Department
350 W. Belknap Street
Fort Worth, Texas 76102

OR91-588

Dear Chief Windham:

Mr. Paul Stuckle, previously with the City of Fort Worth, asked 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# 12754.

The City of Fort Worth received an open records request for "a transcript and a copy of the audio recording of the 911 telephone call made from the . . . 4900 block of Bryce, on May 10, 1991 at approximately 5am." Mr. Stuckle contended that the tape recording, which concerns the shooting of an intruder into an individual's home, is not subject to the Open Records Act and, alternatively, that the recording comes under the protection of sections 3(a)(1), 3(a)(3), and 3(a)(8) of the Open Records Act.

It was first contended citing Open Records Decision No. 398 (1983) as authority, that because the tape recording of the 911 telephone call will be introduced as evidence in a hearing before the Tarrant County grand jury, it is thus within the constructive possession of the judiciary and therefore exempt from the terms of the Open Records Act pursuant to section 2(1)(G) of the act. The rationale in Open Records Decision No. 398, which concerned records prepared under the direction of the Nueces County grand jury, is inapplicable to the information at issue here. This aspect of the request is governed by Open Records Decision No. 513 (1988), which held that information that is neither created, subpoenaed, nor held by a grand jury, but rather is merely introduced as evidence during grand jury proceedings, is not within the constructive possession of the grand jury and thus not

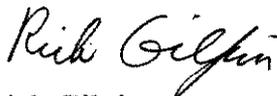
exempt from the Open Records Act. Consequently, this office must determine whether the tape recording comes under the protection of the raised exceptions to disclosure.

Mr. Stuckle suggested that the tape recording is made confidential by article 20.02 of the Texas Code of Criminal Procedure, which provides that the "deliberations of the grand jury shall be secret." This statute makes confidential any records that reveal the deliberations of a grand jury. *See* Open Records Decision No. 513. The information at issue here clearly does not reveal such deliberations and thus is not made confidential by article 20.02.

Since the time that Mr. Stuckle initiated this request for an open records decision, the Tarrant County grand jury heard the evidence presented in this case and "no billed" the homeowner who shot the intruder. Your office has informed us that there is currently no ongoing criminal investigation regarding this matter and no criminal litigation is anticipated. Consequently, sections 3(a)(3) and 3(a)(8) are now inapplicable to the tape recording. *See generally* Open Records Decision Nos. 452 (1986) (litigation must be pending or reasonably anticipated for protection of section 3(a)(3); Open Records Decision Nos. 434 (1986) (section 3(a)(8) protects only records the release of which would "unduly interfere" with law enforcement or prosecution). The tape recording must therefore 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 OR91-588.

Yours very truly,



Rick Gilpin
Assistant Attorney General
Opinion Committee

RG/RWP/lcd

Ref.: ID# 12754

Enclosures: Open Records Decision No. 513
Tape

cc: Jim Valentine
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(w/o enclosures)