



Office of the Attorney General

State of Texas

October 24, 1992

DAN MORALES
ATTORNEY GENERAL

Mr. John S. Schneider, Jr.
Assistant City Attorney
City of Pasadena
P. O. Box 672
Pasadena, Texas 77501

OR92-51

Dear Mr. Schneider:

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# 17530.

The Pasadena Police Department (the "department") has received a request for information relating to a certain shooting incident. Specifically, the requestor seeks information indicating whether "there was a crime being attempted or committed"; whether "anyone has been charged with an offense"; and whether the subject "was under the influence of drugs or alcohol." You have submitted to us for review all the information collected or generated by the department that relates to the shooting incident. You claim that this information is excepted from required public disclosure by section 3(a)(3) of the Open Records Act.

Section 3(a)(3) excepts

information relating to litigation of a criminal or civil nature and settlement negotiations, to which the state or political subdivision is, or may be, a party, or to which an officer or employee of the state or political subdivision, as a consequence of his office or employment, 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(a)(3) applies only when litigation in a specific matter is pending or reasonably anticipated and only to information clearly relevant to that litigation.

Open Records Decision No. 551 (1990). "Whether litigation is reasonably anticipated must be determined on a case-by-case basis." Open Records Decision No. 452 (1986) at 4.

The City of Pasadena has received notice of a claim against the city for damages arising out of alleged "negligence and deliberate indifference" on the part of the department in connection with the shooting incident pursuant to the Texas Tort Claims Act. Civ. Prac. & Rem. Code ch. 101. You have submitted the notice of claim for our review. On the basis of this notice of claim, we conclude that litigation may be reasonably anticipated. Having examined the documents submitted to us for review, we further conclude that the requested information relates to the anticipated litigation. Accordingly, unless already released to the requestor through disclosure, court order, or other means, the requested information, except for first page police offense report information, may be withheld from required public disclosure under section 3(a)(3) of the Open Records Act. See Open Records Decision No. 597 (1991) (section 3(a)(3) cannot be invoked to withhold from disclosure first page offense report information held to be open 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).

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 OR92-51.

Yours very truly,



Celeste A. Baker

Assistant Attorney General

Opinion Committee

CAB/GCK/lmm

Ref.: ID# 17530

Enclosures: Submitted documents

cc: Ms. Nita Mix
Subrogation Coordinator
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702 Southwest 8th Street
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(w/o enclosures)