



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 13, 1992

Mr. Leonard W. Peck, Jr.
Assistant General Counsel
Texas Department of Criminal Justice
Institutional Division
Huntsville, Texas 77342-0099

OR92-100

Dear Mr. Peck:

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# 14601.

The Texas Department of Criminal Justice -- Institutional Division (the department) received an open records request for "documentation/documents pertaining to disciplinary actions/hearings/grievance procedures and final decisions pertaining to the dismissal of the former Warden of Beto I." You contend that the requested information comes under the protection of section 3(a)(3) of the Open Records Act because "the documents . . . are at the center of" the dispute in pending litigation to which the department is a party.

To secure the protection of section 3(a)(3), a governmental body must first demonstrate that the requested information relates to a pending or reasonably anticipated judicial or quasi-judicial proceeding. See Open Records Decision No. 551 (1990). This office has obtained a copy of the documents at issue from the assistant attorney general who is representing the department in the lawsuit styled *Terry L. Terrell v. Texas Department of Criminal Justice*, in which the plaintiff alleges that his employment was terminated in retaliation for reporting violations of law to an appropriate law enforcement authority. See V.T.C.S. art. 6252-16a. The documents consist of correspondence between department officials and the plaintiff and his attorney, an "Employee Grievance Form," and three TDCJ-ID Internal Affairs

reports prepared in response to the former warden's allegations of wrong doing. It is apparent that for purposes of section 3(a)(3) the requested information "relates" to the issues raised in the lawsuit.

This does not, however, end our discussion of the applicability of section 3(a)(3). The assistant attorney general representing the department has informed this office that all information coming within the ambit of the open records request, with the exception of certain expunged information, has been released to the plaintiff in the lawsuit during the discovery process.¹ Absent special circumstances, once information has been obtained by all parties to the litigation through discovery, no section 3(a)(3) interest exists with respect to that information. Open Records Decision Nos. 349, 320 (1982). To the extent that the plaintiff has obtained access to the information in these records, there now is no justification for withholding that information from the requestor pursuant to section 3(a)(3). The department may, however, withhold the expunged information at this time pursuant to section 3(a)(3).

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); 325 (1982), we will raise exceptions under the Open Records Act that protect information deemed confidential under the act because the release of confidential information could impair the rights of third parties and its improper release constitutes a misdemeanor. *See* V.T.C.S. art. 6252-17a, § 10(a). Section 3(a)(17)(A) makes confidential the home addresses and telephone numbers of former public employees who have elected to restrict the release of such information pursuant to the terms of section 3A of the act. The former warden has made a designation that he wishes his home address and telephone number not be released to the general public. Accordingly, the department may not release this information. Additionally, section 3(a)(17)(B) protects from disclosure the home addresses, telephone numbers, and social security numbers of current TDCJ employees. Finally, you must also withhold the information contained in section A.16 of the November 22, 1991, internal affairs investigation report that we have marked as coming under the protection of the common-law privacy aspect of section 3(a)(1) of the act; this information is highly intimate or embarrassing and it is of no

¹The documents you have submitted to this office as Attachment M are not within the ambit of the open records request. Accordingly, we need not address the public nature of these documents at this time.

legitimate concern to the public. *See Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).²

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 OR92-100.

Yours very truly,



Celeste A. Baker
Assistant Attorney General
Opinion Committee

CAB/RWP/mc

Ref.: ID# 14601
ID# 14855

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AAG Criminal Enforcement

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²We also note that if you determine that any portions of the requested documents constitute "sensitive information" as defined by the *Stipulated Modification to the Ruiz Amended Decree*, those portions must also be withheld. *See* Open Records Decision No. 560 (1990).