



Office of the Attorney General
State of Texas

July 16, 1992

DAN MORALES
ATTORNEY GENERAL

Mr. Leonard W. Peck, Jr.
Assistant General Counsel
Texas Department of Criminal Justice
Institutional Division
P. O. Box 99
Huntsville, Texas 77342-0099

OR92-274

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# 14688.

You received on January 10, 1992, a written request for information relating to Mr. David Clark, an inmate of the Texas Department of Criminal Justice Institutional Division. Specifically, the requestor seeks "copies of Mr. Clark's Classification records including but not limited to any social summaries." We have been informed that Mr. Clark was executed February 28, 1992, subsequent to your receipt of this request. Although you have made some of the requested information available, you object to release of a copy of the police investigation report which eventually resulted in Mr. Clark's conviction for capital murder and a document concerning another inmate which identifies certain inmates classified "Not For Same Unit As" ("NFSUA"). You claim that this information is excepted from required public disclosure by sections 3(a)(1) and 3(a)(8) of the Open Records Act. The attorney who prosecuted Mr. Clark claims that the police investigation report is excepted from required public disclosure by section 3(a)(3).

Section 3(a)(8) excepts:

records of law enforcement agencies and prosecutors that deal with the detection, investigation, and prosecution of crime and the internal records and notations of such law enforcement

agencies and prosecutors which are maintained for internal use in matters relating to law enforcement and prosecution.

When the "law enforcement" exception is claimed as a basis for excluding information from public view, the agency claiming it must reasonably explain, if the information does not supply the explanation on its face, how and why release would unduly interfere with law enforcement. Open Records Decision No. 434 (1986) (citing *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977)); see also Open Records Decision No. 413 (1984) (Department of Corrections is a "law enforcement" agency within the meaning of section 3(a)(8)).

You claim that release of the identities of the inmates classified NFSUA could result in retaliation against the source of the information and thus undermine the security of the prison. We agree. Because release of the identities of the inmates classified NFSUA and information which might tend to identify them would undermine a legitimate interest of law enforcement, we conclude that the document may be withheld in its entirety from required public disclosure under section 3(a)(8) of the Open Records Act.

You also claim that the police investigation report contained in Mr. Clark's file is excepted from required public disclosure by section 3(a)(8). This report, taken in conjunction with the other document submitted to us, indicates significant risk of physical retaliation against individuals who cooperated with law enforcement personnel with regard to the capital murder investigation. Thus, you may withhold the report pursuant to section 3(a)(8), except for front page offense report information identified as available to the public in Open Records Decision No. 127 (1976), a copy of which is enclosed. See Open Records Decision No. 597 (1991) (front page offense report information may not be withheld under section 3(a)(3)). Because we resolve this matter under section 3(a)(8), we need not address the applicability of sections 3(a)(1) and 3(a)(3) at this time.

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 OR92-274.

Yours very truly,



Celeste A. Baker
Assistant Attorney General
Opinion Committee

CAB/GK/lmm

Enclosures: Open Records Decision Nos. 597, 127

Ref.: ID# 14688
ID# 15107
ID# 15215
ID# 15453
ID# 15454
ID# 15924

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