Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 31, 1992

Mr. Jack Skeen, Jr.
Smith County Criminal District Attorney
Smith County Courthouse
Tyler, Texas 75702

OR92-437

Dear Mr. Skeen:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, V.T.C.S. article 6252-17a. Your request was assigned ID # 16474.

Smith County has received a request pursuant to the Open Records Act for the investigation file concerning the arrest of Sarah Porter for assault and theft. You have advised that the investigation concerning the alleged assault and theft have been concluded, no charges were filed, and the investigative file has been administratively closed. Smith County claims that portions of these records are excepted from required public disclosure by Open Records Act section 3(a)(8) and 3(a)(11).

Open Records Act section 3(a) provides that all information in the possession of governmental bodies is public information, unless the information meets one of the exceptions of the Act. The exceptions under the Act include, inter alia:

> (8) records of law enforcement agencies and prosecutors that dealt 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; [and]
>
> . . . .

(11) inter-agency or intra-agency memorandums or letters which would not be available by law to a party in litigation with the agency.

You contend that the requested information, or portions thereof, may be withheld on the basis of the *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.*, 536 S.W.2d 559 (Tex. 1976), where the court held that during an active criminal investigation, the authorities are required to release only basic factual information concerning the alleged offense, such as the name of the alleged offender, the name of the complainant, and the time, place, and nature of the offense. The Houston Chronicle case involved an active police investigation; the present case involves a closed criminal investigation, and thus the rule of *Houston Chronicle* is not applicable.

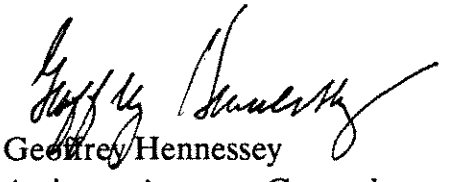
Information may be withheld from an inactive criminal investigatory file pursuant to section 3(a)(8) only where the governmental agency demonstrates that disclosure of the information will unduly interfere with law enforcement or crime prevention. Open Records Decision Nos. 582 (1990), 397 (1983), 339 (1982), 320 (1982). You have not explained how disclosure of the requested information would impede law enforcement or crime prevention; therefore we conclude that section 3(a)(8) does not apply.

Section 3(a)(11) is intended to protect inter- or intra-agency advice, opinion, and recommendation from public disclosure to encourage frank discussion concerning administrative action. Open Records Decision No. 582, 574, 565, 563 (1990). Severable factual information is not excepted by section 3(a)(11). *Id.* The documents you have furnished for our review contain factual summaries or allegations of fact; this is not the type of information that is excepted by section 3(a)(11).

In sum, we conclude that neither sections 3(a)(8) nor 3(a)(11) apply, and thus the information may not be withheld pursuant to the Open Records Act. Because prior published open records decisions resolves 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 OR92-437.

Very truly yours,



Geoffrey Hennessey
Assistant Attorney General
Opinion Committee

GH/lmm

Ref.: ID# 16474

cc: Mr. Dan McLean
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