



Office of the Attorney General

State of Texas

November 19, 1992

DAN MORALES
ATTORNEY GENERAL

Mr. David Motley
County Attorney
County of Kerr
Kerr County Courthouse
700 East Main Street
Kerrville, Texas 78028-5324

OR92-654

Dear Mr. Motley:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), article 6252-17a, V.T.C.S. Your request was assigned ID# 17683.

The Kerr County Attorney (the "county") has received a request for information compiled relating to the arrest of the requestor's client. You assert that the responsive information is exempted from required public disclosure by sections 3(a)(2), 3(a)(3), 3(a)(7), and 3(a)(8) of the act. The requestor invokes section 3B of the act, which details special right of access to confidential information. You assert that section 3B is not applicable.

Section 3(a)(3), the "litigation exception," 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.

V.T.C.S. art. 6252-17a, § 3(a)(3). The litigation exception 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). This exception enables a governmental body to protect its position in

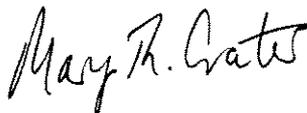
litigation by forcing parties seeking information relating to that litigation to obtain it through discovery, if at all. *Id.*

In a letter dated February 6, 1992, the requestor alleges that his client was subject to false arrest and illegally searched, and asserts that she is entitled to monetary damages. He also notes that he is authorized by his client to "pursue legal action if necessary." On the basis of this letter, we conclude that litigation is reasonably anticipated for purposes of the section 3(a)(3) exception. We have examined the documents submitted. All of the information relates to the anticipated litigation. Therefore, we conclude that the information requested may be withheld from required public disclosure under section 3(a)(3) of the act. Consequently, we need not address the applicability of sections 3(a)(2), 3(a)(7), or 3(a)(8) at this time.

Section 3B provides that a person has a special right of access to "records held by a governmental body that contain information relating to the person that is protected from public disclosure by laws intended to protect that person's *privacy interests*." V.T.C.S. art. 6252-17a, § 3B(a) (emphasis added). However, where information is withheld from public disclosure pursuant to laws intended to protect interests other than privacy interests, section 3B may not be properly invoked. Open Records Decision No. 587 (1991). In other words, the section 3B special right of access applies to information protected from disclosure *solely* by laws designed to protect that person's privacy interests. Open Records Decision No. 542 (1990) at 5. Because the requested information is protected under the litigation exception, section 3B is inapplicable.

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 OR92-654.

Yours very truly,



Mary R. Crouter
Assistant Attorney General
Opinion Committee

MRC/HJ/lmm

Encl.: Submitted documents

Ref.: ID# 17683
ID# 17821

cc: Mr. Enrique Valdivia
Texas Rural Legal Aid, Inc.
613 Water Street
Kerrville, Texas 78028
(w/o enclosures)