



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 5, 1993

Ms. Kay Douglas
Assistant Criminal District Attorney
Walker County
P.O. Box 1659
Huntsville, Texas 77342

OR93-230

Dear Ms. Douglas:

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# 19057.

The Walker County Sheriff's Office (the "sheriff's office") has received a request for information relating to a criminal investigation. Specifically the requestor seeks:

1. Offense Report
2. Crime scene photographs
3. Diagrams
4. Identification of all witnesses
5. Any and all tape-recorded and/or written statements/interviews with all witnesses and drivers/passengers
6. Identification of all parties involved in this incident / accident
7. Toxicology report concerning alcohol or drugs

You have informed us that you do not have any information responsive to items 2, 3, 4, 6, or 7.¹ You contend that the information responsive to items 1 and 5 is excepted from disclosure under section 3(a)(8) of the Open Records act.

Section 3(a)(8) excepts

¹We note that the Open Records Act applies only to information already in existence at the time of the request. A governmental body does not have an obligation to create new information in response to an open records request. Open Records Decision Nos. 572 (1990); 476 (1987). The governmental body does, however, have a duty to relate information in its possession to the request. Open Records Decision No. 561 (1990) at 8.

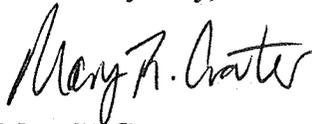
records of law enforcement agencies and prosecutors that deal with the detection, investigation, and prosecution of crime and the internal records and notations of such law enforcement agencies and prosecutors which are maintained for internal use in matters relating to law enforcement and prosecution.

Where an incident involving allegedly criminal conduct is still under active investigation or prosecution, section 3(a)(8) may be invoked by any proper custodian of information which relates to the incident. Open Records Decision Nos. 474 (1987); 372 (1983). Certain factual information generally found on the front page of police offense reports, however, is public even during an active investigation. *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); Open Records Decision No. 127 (1976) at 3-4 (list of factual information available to the public) (copy enclosed).

You state that "the information [relates] to an active case at [the] sheriff's office." Accordingly, you may withhold the requested information, except for factual information held to be public under *Houston Chronicle Publishing Company*, under section 3(a)(8) of the Open Records Act. See Open Records Decision No. 127 at 3-4.

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 contact our office.

Yours very truly,



Mary R. Crouter
Assistant Attorney General
Opinion Committee

MRC/LBC/le

Ref.: ID# 19057

Enclosures: Open Records Decision No. 127
Marked documents

cc: Mr. Jim Strelec
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Austin, Texas 78735
(w/o enclosures)