

The Attorney General of Texas

December 31, 1982

MARK WHITE
Attorney General

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Honorable Kathryn J. Whitmire
Mayor of the City of Houston
P. O. Box 1562
Houston, Texas 77251

Open Records Decision No. 350

Re: Complaints against Houston
police officers and resulting
internal investigation

Dear Ms. Whitmire:

1607 Main St., Suite 1400
Dallas, TX. 75201-4709
214/742-8944

4824 Alberta Ave., Suite 160
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915/533-3484

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An Equal Opportunity/
Affirmative Action Employer

You have requested our decision under the Open Records Act, article 6252-17a, V.T.C.S., as to whether information about complaints filed against Houston police officers and information regarding the resulting internal investigations are available to the public. The specific information requested consists of the following:

1. sworn complaints against police officers filed by (a) private citizens and (b) other officers since 1977;
2. written responses of the officers to such complaints;
3. the final determination of such complaints;
4. letters advising of any disciplinary action related thereto; and
5. details of any lawsuit filed by or against the Houston Police Department as a result of such complaints.

You suggest that some or all of this material is excepted from disclosure by one or more of the following exceptions:

- (1) information deemed confidential by law, either Constitutional, statutory, or by judicial decision;
- (2) information in personnel files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

provided, however, that all information in personnel files of an individual employee within a governmental body is to be made available to that individual employee or his designated representative as is public information under this Act;

(3) 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;

....

(7) matters in which the duty of the Attorney General of Texas or an attorney of a political subdivision, to his client, pursuant to the Rules and Canons of Ethics of the State Bar of Texas are prohibited from disclosure, or which by order of a court are prohibited from disclosure;

(8) records of law enforcement agencies that deal with the detection and investigation of crime and the internal records and notations of such law enforcement agencies which are maintained for internal use in matters relating to law enforcement;

....

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

A similar request was the subject of Open Records Decision No. 208 (1978). In that decision, this office said that the names of complainants who had filed formal complaints with a police department's internal affairs division, the names of the officers who were the subjects of such complaints, and the final disposition of the complaints constituted public information.

As to the first request here, we believe that, in general, copies of the complaints, as well as the names of complainants, are available to the public. Open Records Decision No. 315 (1982). Certain information contained therein might be excepted by section 3(a)(1), if disclosure would contravene constitutional or common law privacy, but such determinations would have to be made on a case-by-case basis. See Open Records Decision Nos. 318 (1982); 273 (1981); 257 (1980). If a lawsuit has been filed as a result of the complaint or if litigation is reasonably anticipated, the complaint may be withheld during the pendency of the litigation. See Open Records Decision Nos. 289; 288 (1981). The same result would obtain as to the officer's written response to a complaint. Some material contained therein might be excepted by constitutional or common law privacy under section 3(a)(1), or by section 3(a)(3), but individual determinations would be necessary in these instances.

A complaint filed by one officer against another and any response filed by the subject of a complaint are excepted under section 3(a)(11) to the extent they contain advice, opinion, and recommendations. Open Records Decision Nos. 315 (1982); 298 (1981). A basic factual narrative of events is not excepted by section 3(a)(11).

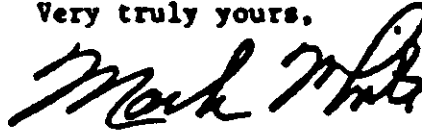
As to the final determination of the complaint and letters advising of disciplinary action, we believe that such material is available under the rationale of Open Records Decision No. 208 (1978). In our opinion, release of such information would not constitute a "clearly unwarranted invasion of personal privacy" under section 3(a)(2). See Open Records Decision No. 316 (1982).

Details of lawsuits filed by or against the Houston Police Department are excepted from disclosure by section 3(a)(3) so long as litigation is pending or reasonably anticipated. Open Records Decision No. 289 (1981). Whether particular litigation is reasonably anticipated must be determined on a case-by-case basis. When litigation has been concluded, section 3(a)(3) no longer acts to except material related thereto.

We must add a note about section 3(a)(8). If a complaint which might result in criminal charges is under active investigation, most of the material may be withheld under section 3(a)(8) during the pendency of the investigation and prosecution. See Open Records Decision Nos. 252 (1980); 127 (1976). If no criminal prosecution results, we do not believe that section 3(a)(8) in general acts to except material relating to complaints against police officers. Open Records Decision No. 315 (1982). In certain instances, however, the Houston Police Department may determine that the release of specific information related thereto "will unduly interfere with law enforcement and crime prevention." Ex parte Pruitt, 551 S.W.2d 706,

710 (Tex. 1977); Open Records Decision Nos. 313 (1982); 297 (1981). In such cases, the department may seek to withhold the particular information about which such a determination has been made.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Mark White", written in a cursive style.

MARK WHITE
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APPROVED:
OPINION COMMITTEE

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