



The Attorney General of Texas

November 29, 1978

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Honorable Robert C. Flowers
Executive Director
Criminal Justice Division
Office of the Governor
411 West 13th Street
Austin, Texas 78701

Open Records Decision No. 211

Re: Whether Criminal Justice Division's work papers relating to audits of grants to the Texas Commission on Jail Standards and the Attorney General's Organized Crime Task Force are public under the Open Records Act.

Dear Mr. Flowers:

You request our decision pursuant to section 7 of article 6252-17a, V.T.C.S., the Texas Open Records Act. You have received a request for copies of the working papers used in preparation of the Criminal Justice Division audit of the Texas Commission on Jail Standards and the Attorney General's Organized Crime Task Force.

You contend that much of the information requested is excepted from required public disclosure. You supplied two file boxes which include more than 5,100 pages of materials. The claims that materials are excepted are stated in broad terms. We have reviewed all of the materials claimed to be excepted from required disclosure.

One exception which you contend is applicable to much of the information relating to both audits is section 3(a)(16) which excepts "the audit working papers of the State Auditor." It would be inconsistent with both the express terms of this exception and the Act's requirement in sections 1, 3(b), and 14(d) that the Act be liberally construed, to expand the applicability of this exception beyond the Office of the State Auditor. The section 3(a)(16) exception by implication makes audit working papers other than those of the State Auditor public, unless covered by some other exception. We will consider your remaining contentions separately in reference to each audit.

Texas Commission on Jail Standards Audit

You contend that a great deal of the material contained in these audit working papers is excepted from public inspection under section 3(a)(11) which

excepts certain information in intra- or inter-office memoranda. This exception is designed to protect from disclosure advice and opinion on policy matters and to encourage open and frank discussion between subordinate and chief concerning administrative action. Attorney General Opinion H-436 (1974). It is not applicable to factual information which can be severed from the opinion, advice, or recommendation. Id. In the context of the materials before us, the exception does not apply to information reflecting the audit program, procedures, the analyses and comparisons made, or the information considered and compiled by the auditors in such studies. Briefly, it does not apply to what the auditors did or to the facts on which the auditors based their final conclusions and recommendations. However, section 3(a)(11) does apply to the staff memoranda and preliminary drafts of audit exceptions and final report because they reflect opinions, advice, and recommendations on the relative significance of facts found in the audit.

The audit working papers are voluminous, and the arrangement and page numbering system are complex. While the table of contents, indices and notes concerning the rearrangement of the materials reflect a difference of opinion among the staff on policy matters, that fact has been previously published. This information gives the public some concept of what information is contained in the working papers and makes access to the public portions of them possible. It is our decision that the table of contents (8 pages), and pages N-F/1, N-G/2, and N-G/3 are public.

It is our decision that the rough drafts and memoranda expressing opinions, advice, or recommendations or commenting on the relative significance of certain facts are excepted from required public disclosure under section 3(a)(11). These appear on the following pages:

Volume I: pages N-1 through N-1/62; N-2 through N-17; last paragraph on page O-3/12; O-3/16a through O-3/16i; O-6

Volume II: Handwritten note at bottom of page Q/6

Volume VI: Handwritten note at bottom of page R-1/B; pages S-1, S-2, S-2/1, S-2/2 through 2/12

You contend that certain materials are excepted from required disclosure under section 3(a)(2), which excepts certain personnel records. The specified pages consist of the resume and application for employment of the Executive Director of the commission. We have inspected these materials and find nothing "the disclosure of which would constitute a clearly unwarranted invasion of personal privacy," and thus it is our decision that this information is not excepted under section 3(a)(2).

All information contained in the audit working papers of the audit of the Texas Commission on Jail Standards not specified as excepted above is public information and must be disclosed.

Audit of Attorney General's Organized Crime Task Force

The request asks for "all materials gathered by the auditors of the Criminal Justice Division in preparation for the March, 1978, audit of the Attorney General's Organized Crime Task Force" including "a survey of county officials who dealt with the Attorney General's Organized Crime Task Force."

You contend that the great bulk of the working papers of this audit are excepted from required disclosure under sections 3(a)(3), (8), (11), or (16). We have determined above that the section 3(a)(16) exception is not applicable. Also, we have found no information which is excepted under section 3(a)(3). You suggest that the 3(a)(11) exception for inter- or intra-agency memoranda is applicable to much of the material. However, the file submitted contains no preliminary drafts of audit exceptions or drafts of the audit report as does the other file of working papers. We have found no staff memoranda or proposed drafts which reflect frank and candid exchanges of opinion on policy matters, the type of information intended to be excepted under section 3(a)(11). It is our decision that no information contained in these audit working papers is excepted from required public disclosure by section 3(a)(11).

Section 3(a)(8) excepts:

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. . . .

We have previously determined that the Attorney General's Organized Crime Task Force is a law enforcement agency within the terms of this exception. Open Records Decision No. 126 (1976). We have also discussed how the 3(a)(8) exception applies to certain records of a law enforcement agency which would disclose undercover activity.

Generally, we believe that information which would reveal specific operations . . . directly related to investigation or detection of crime is excepted from disclosure. Thus, for example, salary information that would reveal the identity of undercover agents is excepted, while that relating to other employees may not necessarily be. . . . Travel information that would reveal procedures or patterns of disposition of undercover agents or other personnel on sensitive assignments would be excepted, while normal travel for administrative, training, or visible field assignments would not.

Open Records Decision No. 22A (1974). Cf. Open Records Decision No. 141 (1976) (travel records of staff of state auditor which would disclose investigation of activities which led to criminal charges are excepted from disclosure).

Some of the operations of the Attorney General's Organized Crime Task Force involve undercover narcotics work. We have reviewed the materials and have determined that disclosure of some of the information is excepted from required public disclosure under section 3(a)(8). The bulk of the information determined to be excepted consists of lists of personnel, travel voucher information, or items mentioning employees by name which, if disclosed, would reveal the identity of those engaged in undercover narcotics work, or would reveal when or where employees had traveled on sensitive assignments. Small portions of the information to be withheld consist of (1) descriptions of law enforcement techniques and procedures used in conducting investigations; (2) procedures for maintaining the security of investigative information; and (3) information relating to pending investigations.

The information excepted from required public disclosure under section 3(a)(8) is noted below. We have noted in parentheses after a page where only a part of the page is to be deleted, or where identifying names or descriptions are to be deleted.

Volume I

Page B-1/49 (names); B-1/51 (name); B-2/8 (last two paragraphs); B-2/9 (last two paragraphs); B-2/10 (notes from "3/22" to end of page); B-2/17 (paragraph); B-2/25; B-2/42 (names); B-2/45;

C-10a/2; C-10b/5; C-10b/9; C-10b/10; C-10b/11; C-10c/1; C-10c/6; C-10d/3; C-10d/4; C-10d/5 (in each case in part C only the marked sentences should be deleted);

D-1; D-2; D-3a; D-3b; D-3c; D-3d;

E-2/1; E-3/1;

F-4/1c; F-5/1b (names); F-6/1a (names); F-6/1b; F-16/1 (names);

G-4/1 (names); G-5/1 (names); G-14/1; G-14/2; G-14/3;

H-1/1; H-2/1; H-3/1 to H-3/3; H-4/1 (names).

Volume II

Page L-1/5a (name); L-1/5c (name); L-1/5d (name); L-1/6a (item 6); L-1/30b (name in item 9(g)); L-1/36a (name in item 2); L-1/36c (name in item 12); L-1/38b (name in item 9(e)); all of item 9(m); L-1/38c (names in item 10); L-1/38d (names in item 13); L-1/38e (names); L-1/45a (name); L-1/47a (identification in item 6);

M-1/3c (name); M-1/17a (item 3); M-1/23a (name); M-1/24a (part of item 8); M-1/24b (part of item 9(k) marked); M-1/24c (note marked); M-1/28a (part of item 3 marked); M-1/28c (name in item 12); M-1/34a (name).

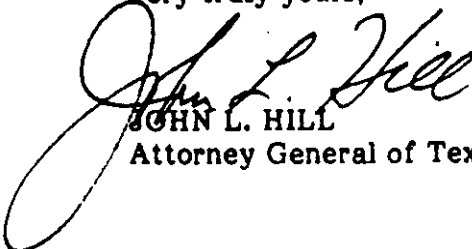
Volume VI (Financial)

Page B-1/1; B-1/3; B-1/15 (items 6, 7);


G/43 through G/49; G/61 through G/65; G/65-2; G/65-5; G/66; G/66-1; G/66-7; G/67 through G/76-25; G-77; G-78.

All information contained in the audit working papers of the audit of the Attorney General's Organized Crime Task Force not specified as excepted above is public information and must be disclosed.

Very truly yours,


JOHN L. HILL
Attorney General of Texas

APPROVED:


DAVID M. KENDALL, First Assistant


C. ROBERT HEATH, Chairman
Opinion Committee

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