



The Attorney General of Texas

November 25, 1981

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An Equal Opportunity/
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Honorable Walter B. Grubbs
Chairman
House Appropriations Committee
Capitol Building
Austin, Texas 78769

Mr. James A. Adkins
Acting Commissioner
Texas Department of Mental Health
and Mental Retardation
P. O. Box 12668
Austin, Texas 78711

Dear Messrs. Grubbs and Adkins:

The news media has asked you to release copies of two documents in your possession. One is an internal audit of the Design and Construction Division of the Department of Mental Health and Mental Retardation. This audit was performed by the agency's Internal Audit Division. The other is a construction project contract for the air conditioning of certain ward buildings at its San Angelo Center. You ask whether the Open Records Act, article 6252-17a, V.T.C.S., requires you to release this information. In support of your contention that you need not do so, you cite sections 3(a)(1), 3(a)(2), 3(a)(3), and 3(a)(6) of the act.

Section 3(a)(3) excepts from public disclosure:

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.

For the section 3(a)(3) exception to apply, litigation must be "pending or reasonably anticipated in regard to a specific matter as

Open Records Decision No. 289

Re: Whether report of internal audit of Texas Department of Mental Health and Mental Retardation's Design and Construction Division is open to the public

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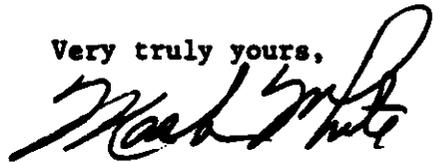
opposed to a remote possibility among a group or classification." Open Records Decision No. 139 (1976); see also Open Records Decision Nos. 183 (1978); 126 (1976); Attorney General Opinion H-483 (1974).

Many of the same individuals and transactions are involved in both the contract and the audit report. We have been advised that copies of both documents are now in the hands of the district attorney of Travis County, who is reviewing them with an eye towards criminal prosecution of one or more of those individuals. We further understand that litigation against the department by a former employee discharged as a result of the audit and said employee's actions under the contract is quite likely. Finally, these documents have been provided to the state and county division of this office for determination of possible litigation against certain individuals named therein. The district attorney and the assistant attorney general in charge of the litigation have determined that this material should not be released.

In light of the foregoing, we believe it may properly be said that litigation is "reasonably anticipated" in this instance. Moreover, our review of the audit and contract, coupled with the information supplied to us, convinces us that the information contained therein would be directly linked to such litigation.

You may therefore withhold this audit from public disclosure under section 3(a)(3).

Very truly yours,



MARK WHITE
Attorney General of Texas

JOHN W. FAINTER, JR.
First Assistant Attorney General

RICHARD E. GRAY III
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Prepared by Jon Bible
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Mr. James A. Adkins
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APPROVED:
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