



The Attorney General of Texas

May 27, 1983

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Affirmative Action Employer

Mr. Mark C. Goode
Engineer-Director
State Department of Highways
and Public Transportation
Dewitt C. Greer State Highway Bldg.
Austin, Texas 78701

Open Records Decision No. 383

Re: Availability of records
concerning citizen's complaint
about highway design and
Highway Department employee

Dear Mr. Goode:

You have requested a decision under the Open Records Act, article 6252-17a, V.T.C.S. We understand that the relevant facts are as follows:

In 1976, the Department of Highways and Public Transportation hired a construction company to construct a section of Interstate Highway 10 in Kimble County, Texas. Both the methods and the result of the construction caused concern among some of the citizens in a nearby town. In a recent letter, a citizen of the town asked you to furnish him a certain report, as well as:

copies of any statements of policy, rules of procedure or instructions to staff made as a result of this investigation.

You have informed us that the report in question was prepared by the department's Internal Review and Audit Section, at your request, to assist you in making decisions concerning safety factors relating to this highway and the job performance of department personnel.

You contend that the report is excepted from required public disclosure under sections 3(a)(1), 3(a)(3), and 3(a)(11) of the Open Records Act. You have not asked us to consider the availability of any of the other requested information.

Section 3(a)(3) excepts from required 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

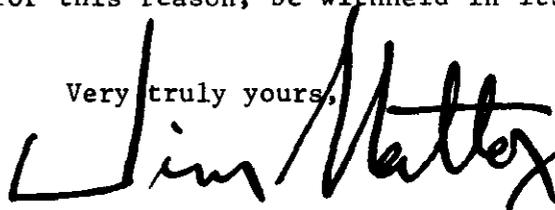
respective attorneys of the various political subdivisions has determined should be withheld from public inspection.

In this instance, the state is clearly a party to pending litigation. This office is representing your department in a wrongful death action initiated by the surviving spouses and children of two men who died in 1977 from injuries sustained in a vehicular accident. The accident occurred on a highway construction detour that connected the portion of Interstate Highway 10 under construction and Highway 290, which, upon completion of the construction, was incorporated in Interstate Highway 10 as the south frontage road. This lawsuit, which was filed in 1979, alleges, inter alia, that the department was negligent "in designing and having constructed a detour on a major highway that resulted in a sharp and flat 'S' curve which could not be safely negotiated at a reasonable speed." Joyce Hudson v. State Department of Highways and Public Transportation, C.A. No. 391-A, pending in 198th District Court of Kimble County, Texas. The assistant attorney general representing the department has determined that this report is relevant to the pending lawsuit and that it should be excepted from disclosure.

Subsection "A" of the report discusses the design and construction of the portion of the highway on which the accident which prompted the present litigation occurred. Subsection "B" contains allegations made by the requestor concerning one of the department's resident supervising engineers and the department's responses thereto. These subsections are preceded by two subsections entitled "Background" and "Investigation Procedure."

In our opinion, it is highly likely that all of the information contained in this investigative report will be directly implicated in the pending lawsuit. We therefore conclude that this information "relates" to this pending litigation within the meaning of section 3(a)(3), and that the report may, for this reason, be withheld in its entirety.

Very truly yours,



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