



**THE ATTORNEY GENERAL
OF TEXAS**

August 22, 1989

**JIM MATTOX
ATTORNEY GENERAL**

Ms. Judith A. Yacono
Assistant City Attorney
Office of the City Attorney
P. O. Box 839966
San Antonio, Texas 78283-3966

Dear Ms. Yacono:

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# 6814; this decision is OR89-266.

Under the Open Records Act, all information held by governmental bodies is open unless the information falls within one of the act's specific exceptions to disclosure. The act places on the custodian of records the burden of proving that records are excepted from public disclosure. If a governmental body fails to claim an exception, the exception is ordinarily waived unless the information is deemed confidential under the act. See Attorney General Opinion JM-672 (1987). The act does not require this office to raise and consider exceptions that you have not raised.

The city of San Antonio received a request for all information held by the city in connection with the demolition of a house, including photographs, charts, or graphs of all buildings deemed to have been dangerous premises; reports and/or summaries of inspections of the property prepared by any city agent or employee; any notices to vacate or repair the premises that were addressed or mailed to the owner of the property; copies of notices of any hearings required by city ordinance that related to the property and any reports, minutes or records developed from any such hearing; copies of any reports or complaints concerning the property; all city ordinances determining whether the premises demolished constituted a nuisance or a hazard or both; any records of requests for disconnection of public utilities to the demolished structure; and copies of all correspondence, notes or records of telephone communications from the owner of the building. You have submitted various documents that you consider to be responsive to this

request, including photographs of the structure prior to its demolition; an interdepartmental memorandum concerning the premises; a building inspection form; a plot plan; tax records; city action notices; a statement of account for the demolition sent to the property owner; a property tax statement; a complaint form citing the address to be demolished; a plat; and an unidentified computer printout that appears to be a legal description of the property.

The city demolished the structure owned by the requestor on September 10, 1988. A demand for damages was received by the city from the property owner. Negotiations between the city and the attorney for the requestor/property owner ensued. The city's offer of settlement was rejected by the property owner and the attorney representing him advised the city that suit would be filed. The city seeks to withhold the requested information under section 3(a)(3) of the Act as information related to litigation.

Section 3(a)(3) of the Open Records Act, known as the litigation exception, excepts from required public disclosure:

information relating to litigation of a civil or criminal nature and settlement negotiations, to which the state or a 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.

You contend that section 3(a)(3) excepts this material from required disclosure because litigation may reasonably be anticipated based on the oral and written assertions of the attorney and because the information that you seek to withhold contains matter "pertaining to the claimant's demand and will almost inevitably arise in the course of his lawsuit."

The test for determining the applicability of this section was stated in Open Records Decision No. 478 (1987). In order to claim the litigation exception, it must be shown that litigation is pending or reasonably anticipated and that the information requested "relates" to the litigation such that release of the information would adversely affect the governmental body's litigation strategy or legal

Ms. Judith A. Yacono
August 22, 1989
Page 3

interest in the litigation. Id.; see Open Records Decision No. 416 (1984).

The mere chance of litigation will not trigger the 3(a)(3) exception. Open Records Decision No. 328 (1982). To demonstrate that litigation is reasonably anticipated, the governmental body must furnish evidence that litigation involving a specific matter is realistically contemplated and is more than mere conjecture. Id.

You have not shown that the requested material meets these tests. A demand letter from an attorney, a failure of negotiations between the property owner's attorney and the city concerning the city's liability for damages, and assertions by the property owner's attorney that suit might be filed all tend to support a belief that litigation is reasonably anticipated. However, you have not shown that the information relates to any litigation involving the property such that release of it would adversely affect the city's litigation strategy or legal interests in the litigation. The mere fact that information might conjecturally relate, in the broadest sense, to a lawsuit is an insufficient showing under the test articulated. See V.T.C.S. art. 6252-17a, § 14(d) (act shall be liberally construed in favor of granting requests). Consequently you may not withhold this information pursuant to section 3(a)(3).

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 refer to OR89-266.

Yours very truly,

*Open Government Section
of the Opinion Committee*

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of the Opinion Committee
Prepared by David A. Newton
Assistant Attorney General

DAN/bc

Ref.: ID# 6814

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