



THE ATTORNEY GENERAL  
OF TEXAS

JIM MATTOX  
ATTORNEY GENERAL

May 26, 1990

Ms. Elizabeth G. Neally  
Attorney for Brownsville I.S.D.  
855 W. Price Road, Suite 26  
Brownsville, Texas 78520-8788

OR90-206

Dear Ms. Neally:

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# 9050.

The Brownsville Independent School District has received a request from a representative of a former employee for a copy of statements made by co-workers. You state that these statements were made during an investigation which was conducted prior to the termination of the employee and that the decision to terminate this former employee was based on some of these statements. You assert these statements are excepted from required public disclosure pursuant to sections 3(a)(1), 3(a)(2), and 3(a)(3) of the Texas Open Records Act.

Section 3(a)(3) of the Open Records Act excepts from required public disclosure:

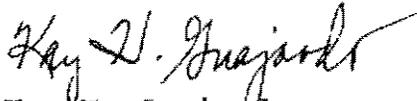
information relating to litigation of a criminal or civil nature and settlement negotiations, to which the state or political subdivision is, or may be, a party, or to which an officer or employee of the state or political subdivision, as a consequence of his office or employment, is or may be a party, that the attorney general or the respective attorneys of the various political subdivisions has determined should be withheld from public inspection.

To claim the protection of section 3(a)(3), a governmental body must show: 1) that litigation is actually pending or reasonably anticipated; and 2) that the information in question "relates" to the litigation. See

Heard v. Houston Post Co., 684 S.W.2d 210 (Tex. App.-Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990). You have not indicated that there is any litigation actually pending or reasonably anticipated that could relate to the requested information. However, one of the letters from the representative of the former employee suggests that there is to be an administrative appeal of the decision to terminate the former employee. Section 3(a)(3), the litigation exception, may be applied to records relating to a contested case before an administrative agency. Open Records Decision No. 301 (1982). See also Open Records Decision Nos. 474 (1987), 368 (1983). The information "relates" to the litigation because it was relied upon in the decision to terminate the former employee. You may withhold the statements of the witnesses pursuant to section 3(a)(3) of the Open Records Act.

Having based our decision on section 3(a)(3), we need not address the applicability, if any, of sections 3(a)(1) and 3(a)(2). 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 OR90-206.

Yours very truly,



Kay H. Guajardo  
Assistant Attorney General  
Opinion Committee

KHG/le

Ref.: ID# 9050

cc: Mr. Raye Lokey  
TSTA Representative  
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