



THE ATTORNEY GENERAL
OF TEXAS

JENI MAPTON
ATTORNEY GENERAL

June 27, 1990

Mr. Bill Zeis
Staff Attorney
Legal Division
Texas Air Control Board
6330 Hwy. 290 East
Austin, Texas 78723

OR90-271

Dear Mr. Zeis:

The Texas Air Control Board (TACB) received a request for all correspondence between May 1, 1989, and June 15, 1989, with regard to Dynagen, Inc., a General Tire facility located in Odessa, Texas. You submitted for review a copy of two handwritten letters from the same individual and a typed copy of each of these letters with certain portions deleted. You advise that the letters were typed and the deletions were made because the handwriting and portions of the contents of the letters may identify the author of the letters. The letters primarily contain complaints of air pollution emitted from the Dynagen facility. You claim these letters are excepted from required public disclosure under two sections of the Open Records Act, article 6252-17a, V.T.C.S.: section 3(a)(1), as information made confidential by judicial decision, *i.e.*, the informer's privilege, and section 3(a)(3), the litigation exception. You ask for our decision on the following questions:

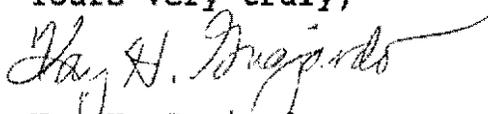
- (1) Is it necessary to type the handwritten letters because the handwriting tends to identify the informant?
- (2) Does more or less information need to be deleted from the redacted copies of the letter?

You have advised us that Dynagen, Inc., is the defendant in a pending lawsuit brought by the State of Texas for alleged violations of the Texas Clean Air Act and rules of the TACB. We have reviewed the requested letters and the pleadings in the case. We agree that the correspondence is related to the pending litigation and should be shielded from public inspection pursuant to section 3(a)(3) of the

Open Records Act. See Open Records Decision No. 551 (1990). For this reason, you may withhold the requested information.

As we have determined that the requested information is nondisclosable under section 3(a)(3), it is not necessary to address your section 3(a)(1) assertion. 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 any questions about this ruling, please refer to OR90-271.

Yours very truly,



Kay H. Guajardo
Assistant Attorney General
Opinion Committee

KHG/le

Ref: ID# 7452 (RQ-1917), 9456, 9663