



THE ATTORNEY GENERAL
OF TEXAS

JIM MATTOX
ATTORNEY GENERAL

September 6, 1990

Mr. Phil Steven Kosub
Attorney for Seguin, Texas
175 East Houston Street
Republic of Texas Plaza, 10th Floor
San Antonio, Texas 78205-2230

OR90-430

Dear Mr. Kosub:

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# 9936.

The City of Seguin has received a request from a reporter for a copy of a report of a transformer leak. You state this report was sent to the office of the finance director by the city's utilities director. You raise exception 3(a)(3) of the Open Records Act to the required public disclosure of this report. In that regard you submit a copy of a letter from an attorney who has been retained to represent two individuals who allegedly sustained injuries as a result of the transformer leak.

For section 3(a)(3) to apply, the information must relate to litigation that is pending or reasonably anticipated. See Open Records Decision No. 551 (1990). The hiring of an attorney and the assertion of that attorney of an intent to sue establish that litigation is reasonably anticipated. See Open Records Decision No. 555 (1990). We agree that the requested report relates to litigation that is reasonably anticipated; you may withhold the report based on section 3(a)(3) of the Open Records Act. However, once this report has been obtained through discovery or by court order, no section 3(a)(3) interest exists and the report must be released.

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 OR90-430.

Yours very truly.



Kay H. Guajardo
Assistant Attorney General
Opinion Committee

KHG/le

Enclosures: Open Records Decision Nos. 551, 555

Ref: ID# 9936

cc: Alphonso Rincon
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