



DAN MORALES
ATTORNEY GENERAL

Office of the Attorney General
State of Texas

April 2, 1991

Ms. Diana L. Granger
Deputy City Attorney
City of Austin
P. O. Box 1088
Austin, Texas 78767-8828

OR91-162

Dear Ms. Granger:

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# 11545.

The City of Austin received an open records request from a representative of a former city employee for "copies of any and all documentation in [the employee's] personnel file pertaining to all on-the-job injuries she has sustained and Worker's Compensation Claims she has filed while employed by the City of Austin." You state that the city has released to the requestor all records pertaining to claims that have been filed and settled. You seek to withhold pursuant to section 3(a)(3) of the Open Records Act all records relating to a pending claim for injuries because the city has "controverted" the claim and "litigators for the City have determined that the information should be withheld."

To secure the protection of section 3(a)(3), a governmental body must first demonstrate that a judicial or quasi-judicial proceeding is pending or reasonably anticipated. 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.* Further, the governmental body's attorney must show that the requested material relates to the litigation. *See* Open Records Decision No. 551 (1990). The purpose of section 3(a)(3) is to prevent the use of the Open Records Act as a method to avoid discovery rules. Attorney General Opinion JM-1048 (1989).

When an employer contests a claim for compensation, the dispute may eventually be resolved either in arbitration or a contested case hearing, each of which provide for the discovery of pertinent documents. *See* V.T.C.S. art. 8308-6.24(e) (arbitration); 8308-6.33

(contested case hearing). You have thus demonstrated that a quasi-judicial proceeding is reasonably anticipated and that the requested documents clearly relate to the issues of the proceeding.

We note, however, that once information has been obtained by all parties to the litigation no section 3(a)(3) interest exists with respect to that information. Open Records Decision Nos. 349, 320 (1982). There is no justification for now withholding pursuant to section 3(a)(3) any information that the requestor or her client has previously seen or had access to; you must therefore release this type of information at this time. You may withhold the remaining 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 OR91-162.

Yours very truly,



Jim Moellinger
Assistant Attorney General
Opinion Committee

JM/RWP/lcd

Ref.: ID# 11545

Enclosures: Submitted documents

cc: Chad Thorne
Labor Representative
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