



DAN MORALES  
ATTORNEY GENERAL

Office of the Attorney General  
State of Texas

June 26, 1991

Mr. Gary F. Chatham  
City Attorney, City of Plano  
1520 Avenue K  
P.O. Box 860358  
Plano, Texas 75086-0358

OR91-285

Dear Mr. Chatham:

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# 12560.

The City of Plano received an open records request for "all investigative documents, including disciplinary action recommendations that have been generated in connection with the investigation which led to" the indefinite suspension of a named Plano police officer. The request was made by an attorney who is representing the suspended officer in connection with the officer's appeal of his suspension. You contend that records of the internal affairs investigation and recommendations as to its final disposition come under the protection of sections 3(a)(1), 3(a)(3), 3(a)(7), 3(a)(11), and 3(a)(18) of the Open Records Act. Because we conclude that all of the requested records may be withheld pursuant to section 3(a)(3), we need not discuss the other exceptions you raise.

The purpose of section 3(a)(3) is to prevent parties in judicial or administrative litigation from using the Open Records Act as a method to avoid the appropriate rules of discovery. Open Records Decision No. 551 (1990). 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 Nos. 452 (1986); 360 (1983); *see also* Open Records Decision No. 588 (1991) (copy enclosed). Further, the governmental body's attorney must show that the requested material relates to the litigation. *See* Open Records Decision No. 551.

You have demonstrated to this office that the officer in question has chosen

to appeal his suspension in a civil service hearing before a third party hearing examiner as provided in section 143.1016 of the Local Government Code. Section 143.1016(f) of the code provides for the subpoena of documents during the course of such hearings. *See also* Local Government Code § 143.1015(d), (e), (f) (procedure for subpoena of materials during appeal before Civil Service Commission). The documents at issue clearly "relate" to the subject matter of the administrative appeal of the officer's suspension. Consequently these documents may be withheld at this time pursuant to section 3(a)(3).

We assume, however, that none of the information in the records at issue has previously been made available to the requestor or his client. Absent special circumstances, 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). If the requestor has seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor 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 OR91-285.

Yours very truly,



Jim Moellinger  
Assistant Attorney General  
Opinion Committee

JM/RWP/lb

Ref.: ID# 12560

Enclosure: Open Records Decision No. 588

cc: John A. Haring  
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