



DAN MORALES
ATTORNEY GENERAL

Office of the Attorney General
State of Texas

September 23, 1991

Mr. Mark Tobey
Office of the Attorney General
Acting Division Chief
Antitrust Division
P.O. Box 12548
Austin, Texas 78711-2548

OR91-437

Dear Mr. Tobey:

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# 13431.

You have received a request for copies of records 'pertaining to an investigation by your office of the Burlington Northern Railroad Company.' The request for information includes documents that 'indicate the nature of the investigation, any action taken, and how this matter was resolved.' You maintain that the requested information is excepted from required public disclosure by sections 3(a)(1), 3(a)(7), 3(a)(8), and 3(a)(10) of the Open Records Act.

You claim that the requested information was collected pursuant to statutory civil investigative demand authority established in section 15.10 of the Business and Commerce Code. Section 15.10(i) provides for the disclosure and use of the material collected for the purposes of an antitrust investigation and states, in pertinent part:

(1) Except as provided in this section or ordered by a court for good cause shown, no documentary material, answers to interrogatories, or transcripts of oral testimony, or copies or contents thereof, shall be available for examination or used by any person without the consent of the person who produced the material, answers, or testimony and, in the case of any product of discovery, of the person from whom the discovery was obtained.

Section 15.10(i)(4) provides for a special right of access to materials for persons who

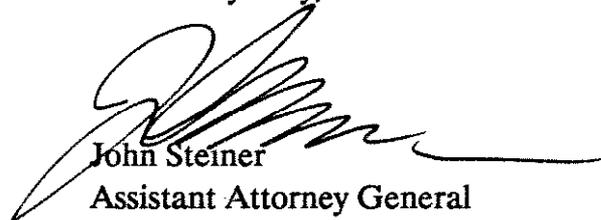
provided the material to the attorney general:

(4) Upon request, the attorney general shall make available copies of documentary material, answers to interrogatories, and transcripts of oral testimony for inspection by the person who produced such material or information and, in the case of a product of discovery, the person from whom the discovery was obtained or by any duly authorized representative of the person, including his or her counsel.

You have not indicated that any person who produced any of the requested information has consented to its release, nor have you indicated that the requestor or a representative of the requestor produced any of the requested information. Accordingly, exceptions to section 15.10(i)(1) and the special right of access accorded by section 15.10(i)(4) do not apply here. Thus, the requested information must be withheld under section 3(a)(1) of the Open Records Act. Because we resolve your request under section 3(a)(1), we need not address the applicability of sections 3(a)(7), 3(a)(8), and 3(a)(10) at this time.

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 OR91-437.

Yours very truly,



John Steiner
Assistant Attorney General
Opinion Committee

JS/GK/lcd

Ref.: ID# 13431, 13456

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