



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 15, 1991

Mr. John T. Hoeft
General Counsel
Dallas Area Rapid Transit
601 Pacific Avenue
Dallas, Texas 75202

OR91-498

Dear Mr. Hoeft:

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# 12739.

Dallas Area Rapid Transit (DART) has received a request for information relating to certain issues of transportation safety. The request for information is divided into 12 categories and includes information relating to DART safety policies, guidelines, past complaints, specific facility improvements, facility maintenance, inspections, investigations, memoranda, bulletins, disciplinary actions taken against employees, and specific audit letters or reports. You claim that the requested information is excepted from required public disclosure by section 3(a)(3) of the Open Records Act.

Previous open records decisions issued by this office resolve your request. Section 3(a)(3) excepts

information relating to litigation of a criminal or civil nature and settlement negotiations, to which the state or political subdivision is, or may be, a party, or to which an officer or employee of the state or political subdivision, as a consequence of his office or employment, is or may be a party, that the attorney general or the respective attorneys of the various political subdivisions has determined should be withheld from public inspection.

Open Records Decision No. 551 (1990) held that section 3(a)(3) applies only when litigation in a specific matter is pending or reasonably anticipated and only to information clearly relevant to the pending litigation. Section 3(a)(3) requires parties to a lawsuit to seek relevant information through the normal process of discovery. *Id.* In a letter to your office dated May 20, 1991, the attorney representing the requestor states that a "lawsuit has been filed and that it intends to file a Third-Party Petition against Dallas Area Rapid Transit." Clearly, litigation may be reasonably anticipated. Having examined the documents sent to us for review, we further conclude that, unless previously disclosed through the discovery process or by court order, the requested information relates to the pending litigation and may be withheld from required public disclosure by section 3(a)(3). Please note that this ruling applies only for the duration of the litigation at issue here.

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 OR91-498.

Yours very truly,



Susan Garrison
Assistant Attorney General
Opinion Committee

SG/GK/lcd

Ref.: ID#s 12739, 12767

cc: Mr. Paul K. Pearce, Jr.
Fanning, Harper & Martinson
8117 Preston Road
Third Floor Preston Commons West
Dallas, Texas 75225