



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 25, 1991

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

OR91-522

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# 13101.

The Plano Police Department has received a request for information relating to an alleged incident of "excessive force" which occurred on November 1, 1990, and involved officers of the Plano Police Department. Specifically, the request includes information related to a police investigation of the matter, the personnel files of the involved police officers, letters of reprimand, the name, rank, and badge number of involved police officers, police policy regarding the arrest of proper handling of a suspect, and police department insurance policies. You do not object to disclosing information relating to police department insurance policies; however, you claim that the remaining 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 that litigation. Section 3(a)(3) requires parties to a lawsuit to seek relevant information through the normal process of discovery. *Id.* You have received a letter from an attorney who represents the requestor which includes a "Notice of Claim for Damages in behalf of our client [the requestor] pursuant to the applicable sections of the Texas Tort Claims Act." This notice sufficiently demonstrates that litigation may be reasonably anticipated.

Having reviewed the documents submitted to us, we conclude that the requested information relates to the anticipated litigation; however, Plano Police Department administrative directives titled "Arrest and Incarceration", "Prisoner Transport, Handling, and Transfer", and "Prisoner Search Policy" appear only to indirectly relate to the anticipated litigation. Moreover, you have communicated to this office that these documents are normally made available to the public. Information which is normally public and only indirectly relates to pending litigation may not be withheld under section 3(a)(3). Open Records Decision No. 143 (1976). Accordingly, these three documents must be released. The remainder of the information, however, may be properly excepted from required public disclosure by section 3(a)(3) of the Open Records Act. Please note that this ruling applies only for the duration of the litigation at issue here and only to information which has not been disclosed by discovery or by court order.

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 OR91-522.

Yours very truly,



Susan Garrison
Assistant Attorney General
Opinion Committee

SG/GK/lcd

Ref.: ID#s 13101, 13255

cc: Mr. Brian R. Arnold
Brian R. Arnold & Associates
8300 Douglas Avenue, Ste. 800
Dallas, Texas 75225