



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

October 30, 1991

Martha C. Wright  
Attorney  
Grand Prairie I. S. D.  
P. O. Box 531777  
Grand Prairie, TX 75053-1777

OR91-533

Dear Ms. Wright:

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# 13223.

The Grand Prairie Independent School District (the district) received an open records request for (1) a "preliminary report" that it received from the Texas Education Agency (TEA) concerning an audit of the district's spending practices, (2) the district's response to that report, and (3) the TEA's final report on the district. Because you have submitted to this office only a copy of the preliminary report, this office assumes that neither of the other two documents existed at the time the open records request was received. *See* Open Records Decision No. 445 (1986) (governmental body not required to obtain or prepare information not in its possession). You contend that the preliminary report is not subject to the Open Records Act and, alternatively, that the report is excepted from required public disclosure by section 3(a)(3).

A previous determination of this office, Open Records Decision No. 407 (1984), governs the first aspect of your request. Section 6 of the act provides

Without limiting the meaning of other sections of this Act, the following categories of information are specifically made public information:

(1) reports, audits, evaluations, and investigations made of, for, or by, governmental bodies *upon completion*. (Emphasis added.)

Section 6(1) of the act provides that, *inter alia*, reports made for or by governmental bodies are public information "upon completion." This section does not, however, imply that "incomplete" reports, or reports that have not been finally "accepted" by a governmental body, are automatically excepted from required disclosure. See Open Records Decision No. 460 (1987) (copy enclosed). The applicable test for required disclosure is twofold: whether the requested information is collected, assembled, or maintained by a governmental body, and if so, whether the information falls within one of the specific exceptions to disclosure under section 3(a) of the act. *Id.* Clearly, the first prong is satisfied here. We may thus consider the second prong of the test.

You contend that section 3(a)(3) protects the report because the transmittal letter that accompanied TEA's report contains the following language:

Because of the serious nature of the findings, copies of the final report will be forwarded to the appropriate judicial and administrative authorities.

To secure the protection of section 3(a)(3), a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation. Open Records Decision No. 551 (1990). The mere chance of litigation will not trigger the 3(a)(3) exception. Open Records Decision Nos. 331, 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.*

It is not clear from the quoted language the precise nature of the possible litigation, the forum of the litigation, or exactly who would be the parties to the litigation. This office need not, however, reach the issue of whether the quoted language by itself is sufficient to invoke the protection of section 3(a)(3) because once information has been obtained by all parties to the potential litigation, no section 3(a)(3) interest exists with respect to that information. Open Records Decision Nos. 349, 320 (1982). By releasing the report to the district and the individual who was

the focal point of the audit, the district has lost any justification for now withholding the report from the requestor pursuant to section 3(a)(3).

None of the exceptions you raise protect the requested information from required public disclosure; consequently the district must release the report in its entirety. 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 OR91-533.

Yours very truly,



Steve Aragon  
Assistant Attorney General  
Opinion Committee

SA/RWP/lcd

Ref.: ID# 13223

Enclosure: Open Records Decision No. 460

cc: Robert A. Mahoney  
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