



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 7, 1991

Mr. Kevin B. Laughlin
First Assistant City Attorney
City of Midland
P. O. Box 1152
Midland, Texas 79702-1152

OR91-548

Dear Mr. Laughlin:

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# 13979.

The City of Midland received an open records request for certain information pertaining to a traffic accident between a city-owned ambulance and a privately owned automobile. Specifically the requestor seeks (1) photographs and diagrams of the accident scene, (2) a list of all witnesses that were interviewed by the investigating police officer¹, and (3) the results of tests performed on any of the ambulance equipment.² You have submitted to this office for review the records

¹You state that the list of witnesses sought by the requestor is not a part of the Texas Peace Officer's Accident Report submitted to the Texas Department of Public Safety pursuant to section 47 of article 6701d, V.T.C.S., and thus is not made public information by that statute.

²Because you have not submitted to us any records coming within the scope of item (3) or made arguments as to why these records are excepted from required public disclosure, we assume that such records did not exist at the time the open records request was made. See Open Records Decision No. 445 (1986) (Open Records Act applies only to information already transcribed into tangible form). In the event such records did exist at the time the city received the request, they must be released at this time. See Open Records Decision No. 542 (1990).

requested in items (1) and (2) and contend that these items come under the protection of section 3(a)(3) of the Open Records Act.³

To secure the protection of section 3(a)(3), a governmental body must demonstrate that 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.*

You state that as a result of the traffic accident, the city-owned ambulance suffered extensive damage and a traffic light and pole were demolished. You further state that the city "is intending to seek compensation for the damages to its property and losses resulting from payment of worker's compensation and health care claims, which action could lead to litigation." You have also informed us that the insurance claims representative for the driver of the privately owned vehicle

is known to have approached a City employee, who is the father of one of the passengers in [the privately owned vehicle], with an offer to settle the family's medical claims and to solicit them to join as parties in a lawsuit against the City.

Based on the above information, this office agrees that it is reasonable for the city to anticipate civil litigation in connection with the traffic accident and that the requested information "relates" to that litigation for purposes of section 3(a)(3). The photographs, diagrams, and witness list may therefore be withheld at this time.

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

³You also contend that these items come under the protection of section 3(a)(8) of the Open Records Act. Because we resolve your request under section 3(a)(3), we need not address your section 3(a)(8) arguments.

a published open records decision. If you have questions about this ruling, please refer to OR91-548.

Yours very truly,



Sarah Woelk
Assistant Attorney General
Opinion Committee

SW/RWP/lcd

Ref.: ID# 13979

Enclosures: Submitted documents

cc: Dennis Jurecek
Claims Representative
P. O. Box 3757
Midland, Texas 79702
(w/o enclosures)