



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 6, 1991

Mr. Leonard W. Peck, Jr.
Assistant General Counsel
Texas Department of Criminal Justice
Institutional Division
P. O. Box 99
Huntsville, Texas 77342-0099

OR91-628

Dear Mr. Peck:

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# 14039.

You have received a request for information relating to a collision between a bus and a horse, which allegedly resulted in injury to a Texas Department of Criminal Justice (TDCJ) inmate. Specifically, the requestor, who is the injured inmate, seeks:

- (1) the names, addresses, and telephone numbers of the horse owner's and the TDCJ's insurance companies;
- (2) all investigative reports and witness statements relating to the incident;
- (3) a copy of the PERS-WC-5-AD35 supervisor report of employee/inmate injury;
- (4) a copy of any document that indicates the horse owner's agreement to pay for damages to the TDCJ bus;

(5) and the cost of repairs to the TDCJ bus.

You have communicated to this office that information responsive to item (1) has been released. In addition, you indicate in a letter to the requestor that some information responsive to items (2) and (3) will be released. It appears, as well, that you have disclosed the information responsive to item (5).¹ As we presume it to be open, we will not address the applicability of this information to the Open Records Act. You claim that the remaining information at issue here is excepted from required public disclosure by section 3(a)(3).

We note that an accident report is included among that information. Open Records Decision No. 251 (1980) held that accident reports prepared by peace officers after January 1, 1970, are public under section 47 of article 6701d, V.T.C.S. Section 47 expressly provides for the release of accident reports and states, in pertinent part:

After January 1, 1970, the Department [of Public Safety] shall provide a copy or copies of any peace officer's report submitted after that date to any person upon written request.

The Open Records Act's exceptions do not, as a general rule, apply to information expressly made public by other statutes. Open Records Decision No. 525 (1989) at 3. Accordingly, you may not properly invoke a section 3(a)(3) exception and must release the accident report.

As regards the remainder of the requested information, Open Records Decision No. 555 (1990) held that the section 3(a)(3) exception is applicable when litigation is pending or may be reasonably anticipated and if the requested information relates to that litigation. Section 3(a)(3) forces parties to a lawsuit to obtain relevant information through the normal process of discovery. Open Records Decision No. 551 (1990) at 4.

¹We understand that information responsive to item (4) does not exist. The Open Records Act does not require a governmental body to make available information which does not exist. Open Records Decision No. 362 (1983).

You advise us that TDCJ is self-insured. Accordingly, the inmate's claim to compensation for his injuries is predicate to litigation. Indeed, the inmate has notified TDCJ of his intent to "to sue the state for personal injuries." We conclude, then, that litigation may be reasonably anticipated. We further conclude that the records submitted to us for review relate to that litigation. Unless those records have been previously disclosed through the discovery process, by court order, or by other means, they may be withheld 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 and only for the information at issue here. *See id.*

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 OR91-628.

Yours very truly,



Celeste A. Baker
Assistant Attorney General
Opinion Committee

CAB/GK/lcd

Enclosures: Documents

Ref.: ID# 14039, 14185

cc: Mr. Joel Kemp
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