



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 24, 1992

Mr. David A. Talbot, Jr.
General Counsel
Office of the Governor
P. O. Box 12428
Austin, Texas 78711

OR92-77

Dear Mr. Talbot:

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# 14818.

You have received a request for a document titled "Ombudsman Listening Post Texas Department of Commerce." You claim that the requested information is excepted from required public disclosure by sections 3(a)(3), 3(a)(11), and 3(a)(16) of the Open Records Act.

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

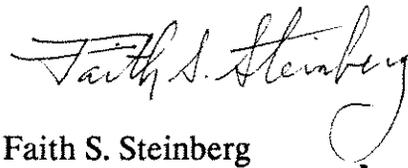
information relating to litigation of a criminal or civil nature and settlement negotiations, to which the state or political subdivision is, or may be, a party, or to which an officer or employee of the state or political subdivision, as a consequence of his office or employment, is or may be a party,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

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. Open Records Decision No. 551 (1990). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 (1986) at 4.

You have submitted to us for review a copy of a letter to Governor Ann Richards and other state officials from an attorney representing three terminated employees of the Department of Commerce. The attorney alleges age discrimination and violation of the law and threatens a lawsuit. The contents of this letter clearly indicate that litigation involving the Governor may be reasonably anticipated. Having reviewed the documents submitted to us, we conclude that the requested information relates to the anticipated litigation and thus 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 at issue and only for information that is not disclosed by the discovery process or by court order. As we resolve this matter under section 3(a)(3), we need not address the applicability of sections 3(a)(11) and 3(a)(16) 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 a published open records decision. If you have questions about this ruling, please refer to OR92-77.

Yours very truly,



Faith S. Steinberg
Assistant Attorney General
Opinion Committee

FS/GK/lcd

Ref.: ID# 14818

Enclosures: Documents

cc: Ms. Cindy Leggett
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