



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

March 31, 1992

Mr. Mark E. Dempsey  
Assistant City Attorney  
The City of Garland  
Post Office Box 469002  
Garland, Texas 75046-9002

OR92-119

Dear Mr. Dempsey:

The city of Garland received a written request for the following:

the completed criminal and internal investigations into the death of Kenneth Baulch, including all statements by witnesses and officers pertaining to the case; investigator's notes; supplemental reports; photographs, a copy of the search warrant issued to police allowing them to enter Kenneth Baulch's home; inventories of on-the-scene evidence; and any and all records of the statements made by the deceased, Kenneth Baulch.

You state that the requestor has been provided a copy of the search warrant. You ask whether the remaining 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# 11800.

You claim that the requested information may be excepted from required public disclosure by, among other provisions, section 3(a)(3) of the Open Records Act, which protects the following:

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

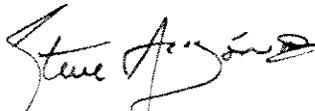
political subdivisions has determined should be withheld from public inspection.

For information to be excepted by section 3(a)(3), it must be shown that litigation is pending or reasonably anticipated and that the information relates to the pending or anticipated litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.-Houston [1st Dist.] 1984, writ ref'd n.r.e.). Once the attorney for the governmental body has determined that information relates to litigation, this office's review will be limited to the relation of the subject matter of the information to the subject matter of the litigation. Open Records Decision No. 551 (1990)

You have supplied this office with a copy of a notice of a claim filed with the city pursuant to the Texas Tort Claims Act by an attorney representing the family of the deceased. *See* Civ. Prac. & Rem. Code § 101.101. This notice sufficiently establishes the likelihood of litigation for purposes of section 3(a)(3). *Compare* Open Records Decision Nos. 555 (1990) (hiring of attorney and attorney's assertion of intent to sue sufficient to invoke section 3(a)(3)); 551 (1990) (section 3(a)(3) may be invoked where attorney sends letter demanding damages and threatens to sue); 452 (1986) (section 3(a)(3) may be invoked where attorney makes a written demand for disputed payments and promises further legal action if they are not forthcoming). We also agree with your determination that the requested information relates to the litigation. You may therefore withhold the information from disclosure 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 OR92-119.

Yours very truly,



Steve Aragón  
Assistant Attorney General  
Opinion Committee

SA/nhb

Ref.: ID# 11800, ID# 11890, ID# 12655

cc: Mr. Al Brumley  
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Dallas Morning News  
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