



Office of the Attorney General
State of Texas

May 4, 1992

DAN MORALES
ATTORNEY GENERAL

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

OR92-185

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# 13873.

You have received a request for personnel file information relating to certain employees of the Texas Department of Criminal Justice ("TDCJ"). Specifically, the requestor seeks information relating to the educational level, names, address, and employment history of fourteen employees of the Institutional Division's Ellis II Unit. You claim that all of the requested information is excepted by required public disclosure by section 3(a)(3) of the Open Records Act. You also claim that some of the requested information is excepted by section 3(a)(17).

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

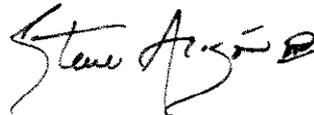
information relating to litigation of a criminal or civil nature and settlement negotiations, to which the state or political subdivision is, or may be, a party, or to which an officer or employee of the state or political subdivision, as a consequence of his office or employment, is or may be a party, 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) at 4. Section 3(a)(3) requires parties to a lawsuit to seek relevant information through the normal process of discovery. *Id.* Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 (1986) at 4.

You advise us that the requested information relates to a case brought against a TDCJ employee by the requestor. The case has been dismissed. However, documents submitted to us for review indicate that the requestor desires to appeal the court's decision. On that basis, we conclude that litigation may be reasonably anticipated. We further agree with your conclusion that the requested information relates to the anticipated litigation. Accordingly, unless the information requested has already been disclosed through the discovery process or by court order, you may withhold the information under section 3(a)(3). Please note that this ruling applies only for the duration of the litigation and to the information at issue here. As we resolve this issue under section 3(a)(3) of the Open Records Act, we need not address the applicability of section 3(a)(17) 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 OR92-185.

Yours very truly,



Steve Aragon
Assistant Attorney General
Opinion Committee

SA/GK/lmm

Ref. ID Nos. 13873, 14222, 14436

cc: Mr. John Richards
TDCJ # 511841
Ellis II Unit - G2-110
Hunstville, Texas 77340