



Office of the Attorney General

State of Texas

December 28, 1992

DAN MORALES

ATTORNEY GENERAL

Ms. Jennifer C. Smith
Staff Attorney
Legal Division
Texas Water Commission
P.O. Box 13087
Austin, Texas 78711-3087

OR92-269

Dear Ms. Smith:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), article 6252-17a, V.T.C.S. Your request was assigned ID# 17198.

The Texas Water Commission (the "commission") has received a request for information relating to an enforcement action by the commission against the City of Corpus Christi (the "city") involving the city's Oso Wastewater Treatment Plant (Oso). Specifically, the requestor seeks 1) a copy of the enforcement action, 2) the letter of notification of the action, 3) "a copy of any enforcement action regarding operating levels in excess of the Oso permit," and 4) results of a meeting with city representatives regarding the same. You state that information responsive to item 4 will be made available to the requestor. You assert that the information responsive to items 1-3 is excepted from required public disclosure by section 3(a)(3) of the act.¹

Section 3(a)(3), the "litigation exception," 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.

¹Documents were submitted to us that are not relevant to any of the requests. Because these documents have not been requested under the act, they are being returned without a ruling on their availability to the public.

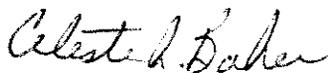
V.T.C.S. art. 6252-17a, § 3(a)(3).² The litigation exception applies only when litigation in a specific matter is pending or reasonably anticipated and only to information relevant to that litigation. Open Records Decision No. 551 (1990). In Open Records Decision No. 588 (1991), this office held that information related to a contested case before an administrative agency subject to the Administrative Procedure and Texas Register Act, V.T.C.S article 6252-13a (APTRA) was "information relating to litigation" for purposes of section 3(a)(3) of the act. *See also* Open Records Decision No. 368 (1983). Whether such litigation or litigation in a quasi-judicial forum is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 (1986) at 4.

The commission alleges that the city has violated portions of the Texas Water Code. Pursuant to this, you advise us that a preliminary enforcement report has been made, and that you are currently drafting a petition with proposed orders for the city. Upon receipt of the proposed orders, you explain the city may consent to the orders, negotiate a settlement, or request an evidentiary hearing. If a hearing is requested by either party, the proceedings are subject to APTRA. Water Code § 26.136(h). However, you provide no facts indicating that in this instance litigation or administrative litigation is reasonably anticipated. Accordingly, the enforcement report, which includes complaints, recommendations, and photographs, must be released. We have also examined the document responsive to item 2. This document was sent previously to the city, and thus, it may not be withheld under by section 3(a)(3). *See* Open Records Decision No. 493 (1988) at 2.

No documents were submitted in response to item 3. You subsequently advised this office that there is no "enforcement action regarding operating levels in excess of the permitted flow limitations for the Oso treatment facility." A governmental body is not required to obtain new information in order to comply with a request. *Economic Opportunities Dev. Corp. of San Antonio v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.--San Antonio 1978, writ dismissed); Open Records Decision No. 561 (1990) at 9.

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 OR92-269.

Yours very truly,



Celeste A. Baker
Assistant Attorney General
Opinion Committee

²This exception enables a governmental body to protect its position in litigation by forcing parties seeking information relating to that litigation to obtain it through discovery, if at all. Open Records Decision No. 551 (1990).

CAB/HJ/Imm

Enclosures.: Submitted documents

Ref.: ID# 17198
ID# 17980

cc: Mr. Frank C. Kolda
6938 Aswan Drive
Corpus Christi, Texas 78412
(w/o enclosures)