



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 3, 1992

Mr. Richard D. Monroe
Associate General Counsel
Texas Department of Transportation
125 East 11th Street
Austin, Texas 78701-2483

OR92-287

Dear Mr. Monroe:

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# 15951.

You have received a request for information relating to an accident involving a motorcycle and two pedestrians on Highway 59 on September 11, 1991. Specifically, the requestor seeks "the accident records and reports of all traffic accidents that have occurred between the intersection of Chimney Rock and Hwy. 59 and the intersection of Hwy. 59 and West Loop 610 for September 11, 1990 through April 15, 1992." In addition, the requestor seeks "the number of accidents ... from September 11, 1990, to September 11, 1991, that occurred in the one year period ... prior to the commencement of construction on this portion of Hwy. 59" and "the documentation and records indicating the placement of signs, road markings and warnings pertaining to this section of the freeway from March 11, 1991 through April 15, 1992." You seek to withhold the requested information from required public disclosure under section 3(a)(3) 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

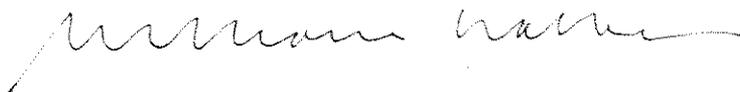
attorney general or the respective attorneys of the various political subdivisions has determined should be withheld from public inspection.

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.

The Department of Transportation has received notice of a claim against the State of Texas for damages arising out of alleged acts and omissions on the part of the state in connection with the accident pursuant to the Texas Tort Claims Act. Civ. Prac. & Rem. Code ch. 101. You have submitted the notice of claim for our review. On the basis of this notice of claim, we conclude that litigation may be reasonably anticipated. Having examined the documents submitted to us for review, we further conclude that the requested information relates to the anticipated litigation and may be withheld from required public disclosure under section 3(a)(3) of the Open Records Act. Please note that this ruling applies only for the duration of the litigation and to the documents at issue here.

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 OR92-287.

Yours very truly,



William Walker
Assistant Attorney General
Opinion Committee

WW/GCK/lmm

Ref.: ID# 15951

cc: Mr. Robert G. Lowman, Jr.
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