



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 4, 1992

Ms. Martha C. Wright
Wright & Associates, P.C.
P. O. Box 531777
Grand Prairie, Texas 75053-1777

OR92-290

Dear Ms. Wright:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the act), V.T.C.S. article 6252-17a. Your request was assigned ID# 15608.

The Grand Prairie Independent School District (the GPISD) has received a request for the following:

The district's voucher for payment of fees to the attorney who met with the GPISD Board of Trustees on November 5, 1990, and/or any other information which identifies the attorney's name, the attorney's payment for services, and the attorney's purpose for meeting with the Board of Trustees on said date.

You have submitted information that you believe is responsive to the request. You contend that section 3(a)(3) of the act permits the GPISD to withhold the requested information.

Section 3(a)(3) excepts from public disclosure

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 section 3(a)(3) to except information from public disclosure, litigation must be pending or reasonably anticipated, and the information must relate to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 555 (1990) at 2. Whether a governmental body reasonably may anticipate litigation must be determined on a case-by-case basis. Open Records Decision No. 452 (1986) at 4.

For a governmental body to succeed on its 3(a)(3) claim, it must present concrete evidence showing that its claim of anticipated litigation is more than mere conjecture. *Id.* The sole basis for your 3(a)(3) argument is your statement that the items discussed at the November 5, 1990, executive session of the GPISD Board of Trustees "were matters which involved potential litigation of the" GPISD. This statement is insufficient to demonstrate that the GPISD reasonably may anticipate litigation. Accordingly, section 3(a)(3) of the act does not permit the GPISD to withhold the requested information from disclosure to the requestor.

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 OR92-290.

Yours very truly,


Kimberly K. Oltrogge
Assistant Attorney General
Opinion Committee

KO/lmm

Re: ID# 15608

cc: Ms. Sandy Kitten
Field Representative
American Federation of Teachers
6309 Ridgewood Drive
Amarillo, Texas 79109