



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 6, 1992

Ms. Susan Owen
Staff Attorney
Legal Division
Texas Air Control Board
12124 Park 35 Circle
Austin, Texas 78753

OR92-369

Dear Ms. Owen:

The Texas Air Control Board (TACB) asks whether certain information is subject to required public disclosure under the Texas Open Records Act, V.T.C.S. article 6252-17a. Your request was assigned ID #15116.

In April and May 1991 the Fina Oil and Chemical Company plant in Port Arthur, Texas, experienced operational upsets causing discharge of air pollutants in excess of those allowed by the federal Clean Air Act. Citizens in and around Port Arthur have claimed the discharge of these air pollutants have adversely affected their living conditions. The TACB conducted an investigation of the Fina plant. On June 11, 1991, the Attorney General filed an injunctive action against Fina in a case styled *State of Texas v. Fina Oil and Chemical Co.*, No. A-139828 (Dist. Ct. of Jefferson Cty, 58th Judicial Dist. of Texas, J. Bradford). This suit is pending.

Pursuant to the Open Records Act, the TACB has received a request for all TACB records which relate to the Fina refinery in Port Arthur, Texas for the period from January 1991 through June 1991. The TACB claims that these documents are excepted by Open Records Act sections 3(a)(3) and 3(a)(10).

Open Records Act section 3(a)(3) excepts from required public disclosure

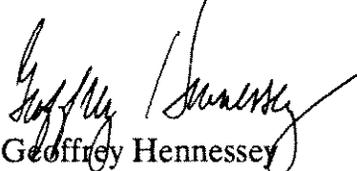
information relating to litigation of a criminal or civil nature and settlement negotiations, to which the state or a political subdivision is, or may be, a party, . . . that the attorney general or the respective attorneys of the various political subdivisions has determined should be withheld from public inspection.

Section 3(a)(3) is intended to allow a government agency 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). For information to be excepted from public disclosure by section 3(a)(3), 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 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.).

We have reviewed the documents submitted for our review, and have concluded that the requested information and the responsive documents relate to the pending litigation. Therefore, the requested documents may be withheld pursuant to section 3(a)(3). Please note that this ruling applies only until the resolution of the matter and to the documents at issue here. Because we resolve this matter under section 3(a)(3), we do not address your claim that the documents are also excepted under 3(a)(10).

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 OR92-369.

Very truly yours,


Geoffrey Hennessey
Assistant Attorney General
Opinions Committee

GH/lmm

Ref.: ID# 15116
ID# 15140

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Mr. Ken Cross
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