



Office of the Attorney General
State of Texas

July 15, 1992

DAN MORALES
ATTORNEY GENERAL

Mr. Joe Hegar
Attorney at Law
P. O. Box 35
Katy, Texas 77492-0035

OR92-393

Dear Mr. Hegar:

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# 16416.

The City of Katy (the city) received an open records request for a notice of claim submitted to the city on behalf of Ms. Trish Johnson pursuant to the Texas Tort Claims Act, Civ. Prac. & Rem. Code § 101.101. You contend that the city may withhold the notice because the requested information pertains to reasonably anticipated litigation against the city. You also contend that disclosure of some of the information contained in the notice may violate the privacy rights of third parties. We interpret your arguments as invoking sections 3(a)(3) and 3(a)(1) of the Open Records Act.

To secure the protection of section 3(a)(3), a governmental body must demonstrate that requested information "relates" to pending or reasonably anticipated litigation. Open Records Decision Nos. 588 (1991); 452 (1986). The mere chance of litigation will not trigger the 3(a)(3) exception. Open Records Decision Nos. 331, 328 (1982). To demonstrate that litigation is reasonably anticipated, the governmental body must furnish evidence that litigation involving a specific matter is realistically contemplated and is more than mere conjecture. *Id.*

Although you have demonstrated that the notice of claim meets these tests, our discussion of the applicability of section 3(a)(3) does not end here. Absent special circumstances, once information has been obtained by all parties to the litigation, no section 3(a)(3) interest exists with respect to that information. Open Records Decision Nos. 349, 320 (1982). In this instance, both the prospective plain-

tiff and defendant to the anticipated litigation have access to the requested record. The city therefore has no section 3(a)(3) interest with regard to the notice.

Section 3(a)(1) of the act protects "information deemed confidential by law, either Constitutional, statutory, or by judicial decision," including the common-law right to privacy. *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* it is of no legitimate concern to the public. *Id.* at 683-85. This office agrees that the notice contains highly intimate and embarrassing information about third parties that is of no legitimate interest to the public. We acknowledge that these facts may become public once a lawsuit is filed, but until that time the city may withhold the identities of the third parties pursuant to the common-law right of privacy. We have marked the portions of the notice that the city must withhold; the remaining information must, however, be released.

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 OR92-393.

Yours very truly,



Kimberly K. Oltrogge
Assistant Attorney General
Opinion Committee

KKO/RWP/lmm

Ref.: ID# 16416

Enclosures: Marked documents

cc: Mr. Thomas A. Adams, III
P. O. Box 127
Katy, Texas 77492-0127
(w/o enclosures)