



Office of the Attorney General  
State of Texas

August 14, 1992

DAN MORALES  
ATTORNEY GENERAL

Ms. Terry White  
City Secretary  
Bridge City  
P. O. Box 846  
Bridge City, Texas 77611

OR92-490

Dear Ms. White:

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# 16767.

You have received a request for information relating to the "Municipal Court controversy." Specifically, the requestor seeks "the entire contents of the packet sent to the attorney in Dallas from whom the City of Bridge City is seeking an opinion regarding the Municipal Court controversy." You claim that the requested information is excepted from required public disclosure by section 3(a)(3).

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.

You advise us that a judge who was recently terminated "spoke to an attorney concerning possibly filing suit against the City." You offer, however, no concrete evidence that any litigation is pending or may be reasonably anticipated. We thus conclude that you may not withhold the requested information under section 3(a)(3) of the Open Records Act.

We note, however, that some of the requested information must be withheld from required public disclosure under sections 3(a)(1) of the Open Records Act. Because the Open Records Act prohibits the release of confidential information and because its improper release constitutes a misdemeanor, this office will raise section 3(a)(1) on behalf of a governmental body. See Open Records Decision No. 455 (1987).

Section 3(a)(1) excepts from required public disclosure "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." Thus, this exception applies to information held confidential under case law. In *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), cert. denied, 430 U.S.931 (1977), the Texas Supreme Court held that section 3(a)(1) applies to information if the disclosure of that information would result in a violation of the common law tort of invasion of privacy through the disclosure of private facts. Under *Industrial Foundation*, information may be withheld on common-law privacy grounds only if it is highly intimate or embarrassing *and* it is of no legitimate concern to the public.

In applying this two-prong test for common-law privacy to financial information about an individual, this office has determined that such information satisfies the first prong of the test, but not the second prong since there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. Open Records Decision Nos. 545 (1990); 373 (1983). Thus, personal investment decisions, such as the decision to allocate one's salary to a voluntary investment program, are excepted from disclosure by a common law right of privacy. Open Records Decision No 545; see also Open Records Decision No. 600 (1992) at 10 (protecting employees' optional insurance coverages). However, information that does not reflect a personal investment decision, such as information about an employee's participation in a group

insurance program funded in part by the state is not excepted from disclosure by a right of privacy. *See id.* at 9.

Some of the documents submitted to us for review reflect the personal investment decisions of a city employee with respect to Texas Municipal Retirement System benefits. For your convenience, this information has been marked and must be withheld from required public disclosure under section 3(a)(1) of the Open Records Act. *See* Open Records Decision No. 545 at 6.

Next we consider the minutes of executive sessions of the city council, included among the documents submitted to us for review. Section 2A of the Open Meetings Act, article 6252-17, V.T.C.S., requires governmental bodies meeting in closed session to "keep a certified agenda of the proceedings." V.T.C.S. art. 6252-17, § 2A(a). The certified agenda

shall include an announcement made by the presiding officer at the beginning and end of the meeting indicating the date and time. The certified agenda shall state the subject matter of each deliberation and shall include a record of any further action taken. The certified agenda of closed or executive sessions shall be made available for public inspection and copying only upon court order in an action brought under this Act.

*Id.* subsec. (c). You do not indicate that a court order makes these minutes available. Accordingly, they must be withheld from required public disclosure under section 3(a)(1) of the Open Records Act. *See* Open Records Decision Nos. 563 (1990); 495 (1988)

Finally, we note that some of the information submitted to us for review includes information protected by the attorney-client privilege. The Texas State Bar Disciplinary Rules of Professional Conduct proscribe an attorney from disclosing "confidential" information of a client or former client. Rule 1.05(a)(1). The attorney-client privilege prevents the disclosure of communications between a client or his representatives and his attorney or associated attorneys. Texas Rules of Civil Evidence 503(b). Information may be protected under the attorney-client privilege only if it reveals client confidences or contains legal advice or opinion. Open Records Decision No. 574 (1990). We have marked the information that must be withheld from required public disclosure under section 3(a)(1) of the Open Records

Act in conjunction with the attorney-client privilege. The remaining information must 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 OR92-490.

Yours very truly,



Kay Guajardo  
Assistant Attorney General  
Opinion Committee

KHG/GCK/lmm

Ref.: ID# 16767

cc: Mr. John Manuel  
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