



Office of the Attorney General
State of Texas

August 25, 1992

DAN MORALES
ATTORNEY GENERAL

Ms. Beverly J. Landers
Acting Deputy City Attorney
City of Austin
Department of Law
P. O. Box 1088
Austin, Texas 78767-8828

OR92-516

Dear Ms. Landers:

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# 16934.

The City of Austin (the "city") has received three requests for information relating to the Watersbend Apartment Complex (the "apartments"). The requests are broad and seek, *inter alia*, all records in the possession of the city Legal Department, Fire Department, Health and Human Services Department, Environmental and Conservation Services Department, and the Austin Housing Finance Corporation which relate to the apartments and the former Brinkley-Anderson Landfill. You claim that some of the requested information is excepted from required public disclosure by section 3(a)(3) of the Open Records Act. You also claim that some of the requested information is excepted from required public disclosure by sections 3(a)(1), 3(a)(7), 3(a)(11) and, and 3(a)(13).¹

Previous open records decisions issued by this office resolve your request. Section 3(a)(3) excepts

¹You advise us that in making some of the requested information available to one of the requestors, some of the information which you seek to have withheld (Exhibit G) was "inadvertently" released. The Open Records Act does not preclude a governmental body from invoking its exceptions to protect from further public disclosure information which has been released on a limited basis through no official action and against the wishes and policy of the governmental body. Open Records Decision No. 387 (1983).

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).

You advise us that litigation in this matter is pending in *Roderick Tanner, et al. v. The City of Austin, et al.*, Cause No. 92-11228, in the Travis County District Court. Having examined the documents submitted to us for review, we generally agree with your determination that the requested information relates to the litigation and may be withheld pursuant to section 3(a)(3). However, the exception does not apply to information that is already part of public records, such as city ordinances and resolutions, a joint administrative order issued by the Department of Health and the Texas Water Commission, statutes, regulations, court pleadings, newspaper clippings and press releases. Further, the file contains some information that does not relate to the pending litigation, such as receipts for payment of fees, special permit information and information about the placement of signs. Please note that this ruling applies only for the duration of the litigation and to the documents at issue here. As we resolve this matter under section 3(a)(3), we need not address the applicability of sections 3(a)(1), 3(a)(7), 3(a)(11), and 3(a)(13) of the Open Records Act.

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 OR92-516.

Yours very truly,



Kay H. Guajardo
Assistant Attorney General
Opinion Committee

KHG/GCK/lmm

Ref. ID# 16934
ID# 16937

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