



Office of the Attorney General

State of Texas

September 8, 1992

DAN MORALES
ATTORNEY GENERAL

Mr. Roger D. Hepworth
Henslee, Ryan & Groce
Great Hills Plaza
9600 Great Hills Trail
Suite 300 West
Austin, Texas 78759-6303

OR92-522

Dear Mr. Hepworth:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), article 6252-17a, V.T.C.S. Your request was assigned ID# 17003.

You represent the Magnolia Independent School District (the "district"), which has received two requests for information from a member of the public. Specifically, the requestor "would like to review the letters sent to the Board (MISD) from the Patrons regarding the [Petition for Detachment and Annexation filed by The Woodlands Corporation]" and a "certified copy of Mr. Pachacek's report." You seek to withhold the letters and the report based on section 3(a)(3) of the Open Records Act.

Section 3(a)(3), the "litigation exception," 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.

V.T.C.S. art. 6252-17a, § 3(a)(3). The litigation exception applies only when litigation in a specific matter is pending or reasonably anticipated and only to

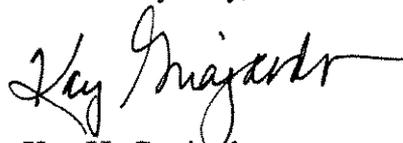
information clearly relevant to that litigation. Open Records Decision Nos. 555, 551 (1990). "Litigation" encompasses proceedings conducted in quasi-judicial forums as well as in strictly judicial ones. See Open Records Decision Nos. 588 (1991) (contested case under the Administrative Procedure and Texas Register Act (APTRA) considered "litigation"); 556 (1990). You inform us that "the Woodlands Corporation has filed a suit before the Texas Education Agency appealing the denial of the petition by MISD and [that] MISD has filed a suit in district court on a related issue." Accordingly, we conclude that litigation is pending.

Furthermore, having examined the letters and the report at issue which you submitted to us for review, we agree that they relate to the pending litigation. We, therefore, conclude that you may withhold the letters pursuant to section 3(a)(3). Please note that this ruling applies only for the duration of the litigation at issue and only to the letters at issue here.

With regard to the report at issue, however, the requestor informed us that the Woodlands Corporation has received a copy of the report, dated June 10, 1992. Section 3(a)(3) does not protect information which has already been disclosed to the opposing party in the litigation. Open Records Decision No. 349 (1982). Thus, assuming you have already released a copy of the report to the Woodlands Corporation, there is now no justification for withholding the report under section 3(a)(3), and it 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 OR92-522.

Yours very truly,



Kay H. Guajardo
Assistant Attorney General
Opinion Committee

KHG/HJ/lmm

Ref.: ID# 17003
ID# 17164

cc: Ms. Jeanette McVey
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