



## Office of the Attorney General

State of Texas

September 21, 1992

DAN MORALES  
ATTORNEY GENERAL

Ms. Jackee Cox  
General Counsel  
Texas Department of Criminal Justice  
P. O. Box 99  
Huntsville, Texas 77342-0099

OR92-555

Dear Ms. Cox:

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# 16667.

The Texas Department of Criminal Justice (the "department") has received a request for information relating to certain jail facilities. Specifically, the requestor seeks

[a]ll documents, writings, information, letters, memoranda, reports, appraisals, or other written, printed, typed, copied, or developed materials, including intra-agency communications and/or correspondence, collected, assembled, filed with, or maintained by this office, regarding private jail facilities in the following Texas counties:

1. LaSalle
2. Swisher
3. Falls
4. Pecos
5. San Saba
6. Angelina

You have submitted to us for review representative samples of the requested information, including cooperation agreements with two emergency medical services, a feasibility study regarding use of N-Group Securities, Inc., facilities, and various correspondence and memoranda relating to the department's efforts to

negotiate the acquisition of certain properties. You seek to withhold the requested information under sections 3(a)(1), 3(a)(3), 3(a)(5), and 3(a)(11) of the Open Records Act.

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. In Open Records Decision No. 311 (1982) (copy enclosed), this office held that the likelihood of condemnation hearings to acquire a specific tract of land for a proposed power transmission line indicated that litigation was "reasonably anticipated."

You advise that the department intends to file condemnation proceedings to acquire the six jail facilities that are the subject of the request for information at issue here. The assistant attorney general representing the department further advises that he anticipates instituting six suits on behalf of the department under the State's eminent domain power in order to acquire the six jail facilities. We conclude thus that litigation may be reasonably anticipated. We also agree with your determination that the requested information relates to the anticipated litigation. Accordingly, the requested information may be withheld from required public disclosure under section 3(a)(3) of the Open Records Act. As we resolve this matter under section 3(a)(3), we need not address the applicability of sections 3(a)(1), 3(a)(5), and 3(a)(11) at this time.

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 OR92-555.

Yours very truly,



Celeste A. Baker  
Assistant Attorney General  
Opinion Committee

CAB/GCK/lmm

Enclosures: Open Records Decision No. 311

Ref.: ID# 16667  
ID# 16784  
ID# 16843

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(w/o enclosures)