



Office of the Attorney General

State of Texas

October 6, 1992

DAN MORALES
ATTORNEY GENERAL

Mr. Richard D. Monroe
Associate General Counsel
Texas Department of Transportation
125 East 11th Street
Austin, Texas 78701-2483

OR92-576

Dear Mr. Monroe:

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# 17182.

You have received a request for information relating to an accident that occurred September 1, 1990, on State Highway 6 at Mile Post 600 and which claimed the lives of two motorists and injured two others. Specifically, the requestor seeks "documents pertaining to the subject highway for the last ten (10) years [including]:

1. Skid test information;
2. Friction test information;
3. Maintenance records;
4. Materials used in repairs;
5. Surveyor reports;
6. Surface test reports; and
7. Any other documentation pertaining to the condition, repair, and maintenance of the subject highway.

You seek to withhold the requested information from required public disclosure under section 3(a)(3) 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.

The Department of Transportation has received notice of a claim against the State of Texas for damages arising out of alleged acts and omissions on the part of the state in connection with the accident pursuant to the Texas Tort Claims Act. Civ. Prac. & Rem. Code ch. 101. You have submitted the notice of claim for our review. On the basis of this notice of claim, we conclude that litigation may be reasonably anticipated. Having examined the documents submitted to us for review, we further conclude that the requested information relates to the anticipated litigation and may be withheld from required public disclosure under section 3(a)(3) of the Open Records Act. Please note that this ruling applies only for the duration of the litigation and to the documents at issue here.

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 OR92-576.

Yours very truly,



Celeste A. Baker
Assistant Attorney General
Opinion Committee

CAB/GCK/lmm

Ref.: ID# 17182

cc: Mr. John L. Pierce, II
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