



Office of the Attorney General
State of Texas

December 2, 1992

DAN MORALES
ATTORNEY GENERAL

Ms. Helen M. Gros
Assistant City Attorney
City of Houston
Legal Department
P. O. Box 1562
Houston, Texas 77251-1562

OR92-677

Dear Ms. Gros:

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# 17381.

The Department of Health (the "department") of the City of Houston has received a request for reports or complaints of foul-smelling air or gases in the area of a certain elementary school.¹ You advise that the requestor subsequently indicated his interest in records or complaints of sulfur dioxide releases by a particular chemical company. In response, you have forwarded to us for review documents concerning that company and a copy of a representative complaint. On behalf of the department, you state that these documents are excepted from required public disclosure by section 3(a)(3) of the Open Records Act.

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

¹The requestor also asks two factual questions in his request letter. You need not respond to these questions since the Open Records Act does not require a governmental body to answer factual questions. Open Records Decision Nos. 555 (1990); 347 (1982).

political subdivisions has determined should be withheld from public inspection.

V.T.C.S. art. 6252-17a, § 3(a)(3). This exception applies only when litigation in a specific matter is pending or reasonably anticipated and only to information relevant to that litigation. Open Records Decision No. 551 (1990). Furthermore, absent special circumstances, once information has been obtained by all parties to the litigation, *e.g.*, through discovery or otherwise, no section 3(a)(3) interest exists with respect to that information. Open Records Decision Nos. 349, 320 (1982).

You advise that the city has filed suit against the chemical company in the 281st Judicial District Court of Harris County. Clearly, litigation is pending for purposes of the section 3(a)(3) exception. We have reviewed the documents submitted for our review, and we agree that they relate to that litigation. Thus, you may withhold those documents pursuant to section 3(a)(3). Please note that this ruling will no longer apply when all parties to the litigation obtain access to the protected information or the litigation is resolved.

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 OR92-677.

Yours very truly,



Celeste A. Baker
Assistant Attorney General
Opinion Committee

CAB/HJ/lmm

Encl.: Submitted documents

Ref.: ID# 17381

cc: Mr. Geoff Davidian
Houston Chronicle Reporter
Houston Chronicle
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(w/o enclosures)