



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 17, 1992

Mr. Richard M. Abernathy  
Abernathy, Roeder, Robertson & Joplin  
P. O. Box 1210  
McKinney, Texas 75069-1210

OR92-695

Dear Mr. Abernathy:

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# 17634.

The City of Frisco (the "city"), which you represent, has received a request for "all documents and correspondence relating to lead and battery chip casings at Bicentennial Park and other areas in Frisco, the Texas Water Commission's response to the alleged lead contamination and all documents that refer [to] or contain information concerning violations of environmental standards by GNB, Inc." You have submitted to us for review documents responsive to the request and claim that they are excepted from required public disclosure by sections 3(a)(3) and 3(a)(11) of the Open Records Act. You also claim that this information is protected from disclosure by the attorney-client privilege.

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. Several telephone threats to sue, where at least one is from an attorney, is sufficient to invoke section 3(a)(3). *Id.* at 5-6.

You advise us that the city is currently involved in negotiations with several parties, including the Texas Water Commission and the United States Environmental Protection Agency, regarding efforts to remediate contamination resulting from battery casings stored in a city park. You advise that failure to successfully conclude the negotiations could result in the institution of litigation against the city. You further advise that the city has received several verbal threats of litigation from citizens living near the park who allege injury from the contamination. We agree with your determination that the city may reasonably anticipate litigation with respect to this matter. 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. As we resolve this matter under section 3(a)(3), we need not address the other claimed exceptions 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 OR92-695.

Yours very truly,

  
Rick Gilpin  
Assistant Attorney General  
Opinion Committee

RG/GCK/lmm

Ref.: ID# 17634

cc: Ms. Dawn King  
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