



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 31, 1993

Mr. Michael L. Davis
Schmidt & Davis
Attorney for Natalia, Texas
9846 Lorene
San Antonio, Texas 78216

OR93-158

Dear Mr. Davis:

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# 19048.

The City of Natalia (the "city"), which you represent, has received a request for copies of an investigative report your firm prepared for the city council. Specifically, the requestor seeks "copies of the investigative report submitted to the city council by City Attorney Ronald Schmidt with reference to Police Chief Wesley Coddington and the Natalia Police Department." You have submitted the requested report to us for review and claim that it is excepted from required public disclosure by sections 3(a)(1), 3(a)(3), and 3(a)(7) of the Open Records Act.

Previous open records decisions issued by this office resolve your request. Section 3(a)(3) excepts

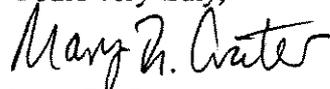
information relating to litigation of a criminal or civil nature and settlement negotiations, to which the state or political subdivision is, or may be, a party, or to which an officer or employee of the state or political subdivision, as a consequence of his office or employment, is or may be a party, 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. Several telephone threats to sue, where at least one is from an attorney, is sufficient to invoke section 3(a)(3). *Id.*

You advise us that "[s]everal citizens, personally or through their attorneys, have informed members of the City Council of their intent to sue the City" because of acts subject to the requested investigation. You also advise us that one of the subjects of the investigation has threatened to sue the city for violation of his civil rights. We agree that the city may reasonably anticipate litigation with respect to this matter. Having examined the documents submitted to us for review, we also agree with your determination that the requested information relates to the anticipated litigation and therefore 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 OR93-158.

Yours very truly,



Mary R. Crouter
Assistant Attorney General
Opinion Committee

MRC/GCK/le

Ref.: ID# 19048

cc: Ms. Linda Sherrell
Medina Valley Times
P.O. Box 447
Devine, Texas 78016