



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 31, 1993

Mr. Charles E. Griffith, III
City of Austin
P.O. Box 1088
Austin, Texas 78767-8828

OR93-161

Dear Mr. Griffith:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, V.T.C.S. article 6252-17a. Your request was assigned ID# 18801.

The City of Austin (the "city") has received two requests for information relating to employees of Brackenridge Hospital. Specifically, the requestor seeks "the name, department, and, unless expressly requested to be kept confidential, the home address of all Brackenridge employees who, since June 1991, have worked any overtime and who have also been paid any wage differential" and "a complete listing of all Brackenridge and Health and Human Services employees which states F.L.S.A. [Fair Labor Standards Act] status." You claim that section 3(a)(3) of the Open Records Act excepts the requested information from required public disclosure.

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. A governmental body properly invokes section 3(a)(3) if it has received a written demand from an attorney

that threatens further legal action in the event that the governmental body does not meet the stated demands. *Id.*

The city has received a letter from the American Federation of State, County and Municipal Employees. This union represents many city employees at Brackenridge Hospital and alleges various violations of the Fair Labor Standards Act. The union makes several demands to correct the city's violations. While the union does not expressly threaten litigation, it makes its demands so as "to ensure that all affected employees are made whole, to create mechanisms to prevent such wrong-doing in the future, and to ensure that those persons who have not performed their jobs in a manner consistent with the highest professional standards be held accountable." On the basis of the allegations made in this letter and the correctives demanded, we conclude that the city reasonably may 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 that section 3(a)(3) of the Open Records Act authorizes the city to withhold the requested information from required public disclosure. 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 OR93-161.

Yours very truly,



Kymlberly Oltrogge
Assistant Attorney General
Opinion Committee

KKO/GCK/le

Ref.: ID# 18801
ID# 18807
ID# 19016

cc: Mr. Michael Shirk
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