



Office of the Attorney General
State of Texas

June 7, 1993

DAN MORALES
ATTORNEY GENERAL

Mr. Edward H. Perry
Assistant City Attorney
Office of the City Attorney
City Hall
Dallas, TX 75201

OR93-290

Dear Mr. Perry:

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# 19045.

The City of Dallas (the "city") received a request for documents pertaining to the Dallas Apartment Repair Program ("DARP") and the Rental Rehabilitation Program ("RRP"). The request initially included all applications to the program submitted since 1989, "whether said applications resulted in a subsidy, were rejected, or were abandoned," any agency memoranda that makes reference to the applications, and all legal documents related to lawsuits filed against or on behalf of the city concerning the programs. You have submitted for our review a representative sample of the kinds of documents requested.

Mr. Cook, the requestor, subsequently limited his request for information in a letter to our office, dated March 1, 1993. You have received a copy of that letter which states in part that "the application itself would be sufficient, consisting of a cover page, pages 1-4, and projected pro-forma." In addition Mr. Cook limited his request for legal documents to "claims, responses and settlements, pending or otherwise, and filings, orders and settlements which are the result of litigation pursuant to the DARP and RRP programs." He did not limit his original request for agency memoranda referencing the applications to the programs.

You have agreed to provide Mr. Cook with copies of the applications and projected pro-forma if "the applicant's request for assistance has been abandoned, denied or documents have been executed granting the assistance."¹ Furthermore, you will

¹See Open Records Decision Nos. 590 (1991), 545 (1990), 455 (1987), and 373 (1983) for the kinds of information generally excepted from disclosure by section 3(a)(1).

provide Mr. Cook with copies of documents "filed with the courts or transferred to opposing parties, except for those documents, if any, which must remain confidential due to a protective order."²

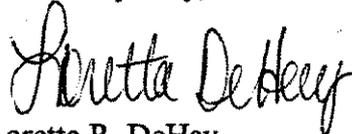
You claim that some of the information constitutes "inter-agency or intra-agency memorandums or letters which would not be available by law to a party in litigation with the agency" under section 3(a)(11) of the act and, therefore, is excepted from public disclosure.

For several months now, the effect of the section 3(a)(11) exception has been the focus of litigation. In *Texas Dept. of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ), the Third Court of Appeals recently held that section 3(a)(11) "exempts those documents, and only those documents, normally privileged in the civil discovery context." *Gilbreath* at 413. The court has since denied a motion for rehearing this case.

We are currently reviewing the status of the section 3(a)(11) exception in light of the *Gilbreath* decision. In the meantime, we are returning your request to you and asking that you once again review the information and your initial decision to seek closure of this information. We remind you that it is within the discretion of governmental bodies to release information that may be covered by section 3(a)(11). If, as a result of your review, you still desire to seek closure of the information, you must re-submit your request and the documents at issue, along with your arguments for withholding the information pursuant to section 3(a)(11) or any other exception that you have previously raised. You must submit these materials within 15 days of the date of this letter. This office will then review your request in accordance with the *Gilbreath* decision. If you do not timely resubmit the request, we will presume that you have released this information.

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 contact our office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Opinion Committee

LRD/SG/le

Ref.: ID#19045

²See Open Records Decision Nos. 551 (1990), 525 (1989) and 389 (1983) for information on section 3(a)(3), the litigation exception.

Enclosures: Submitted documents

cc: Mr. Carl A. Cook
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(w/o enclosures)