



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 8, 1993

Mr. Stephan L. Sheets
City Attorney
City of Round Rock
221 East Main Street
Round Rock, Texas 78664

OR93-439

Dear Mr. Sheets:

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# 20404.

The City of Round Rock (the "city") received an open records request for "lab analyses . . . of effluent, wastewater, or creek water taken within one mile above or one mile below Brushy Creek Municipal Utility District Wastewater Treatment Facilities permit nos. 11865-01 and 11866-01." You contend these records may be withheld from the public pursuant to section 3(a)(3) of the Open Records Act because the records relate to a contested permit hearing currently pending before the Texas Water Commission (the commission).

To secure the protection of section 3(a)(3), a governmental body must demonstrate that the requested information "relates" to a pending or reasonably anticipated litigation to which the entity is a party. Open Records Decision No. 551 (1990). In this instance this office has confirmed in a telephone conversation with the commission that the city has been made a party to the contested hearing. Because you have made the requisite showing that the requested information relates to pending litigation, the city may withhold the requested records at this time pursuant to section 3(a)(3). We note, however, that the applicability of section 3(a)(3) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982). Furthermore, once the requested information is made available to the parties, through discovery or otherwise, no section 3(a)(3) interest exists with respect to that information, and you may no longer rely on section 3(a)(3) to except it from required public disclosure under the Open Records Act.

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,



Celeste A. Baker
Assistant Attorney General
Opinion Committee

CAB/RWP/jmn

Ref.: ID# 20404
ID# 20412

Enclosures: Submitted documents

cc: Ms. Barbara Day
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(w/o enclosures)