



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

June 5, 1989

Mr. Robert E. Shaddock
General Counsel
State Department of Highways
and Public Transportation
11th & Brazos
Austin, Texas 78701-2483

Dear Mr. Shaddock:

This will acknowledge receipt of your letter of March 24, 1989, requesting a decision on the public availability of certain information under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your letter has been designated ID# 5972; this decision is OR89-164.

In a letter dated December 21, 1988, you requested a decision from this office concerning the public availability of information on a fatal accident which occurred on October 3, 1987, in Bexar County. You raised section 3(a)(3) of the Open Records Act as an exception to disclosure. In OR89-76, this office determined that you had not made the requisite showing necessary under section 3(a)(3) to withhold the information from the requestor. However, we provided your office with additional time to submit evidence that a lawsuit is realistically being contemplated and that the Department of Highways and Public Transportation has a compelling reason to withhold the information.

Section 3(a)(3) of the act authorizes governmental bodies to deny requests for information relating to pending or "reasonably anticipated" litigation involving a governmental entity or its officers or employees as well as information relating to settlement negotiations involving such litigation. Attorney General Opinion H-483 (1974); Open Records Decision No. 331 (1982). As we indicated in OR89-76, permitting the public to be denied access to information simply because of a remote chance of litigation would contravene the policy of openness of the Open Records Act. This office will find that litigation is "reasonably anticipated" only if a governmental body furnishes concrete

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evidence establishing that litigation involving a specific matter is realistically contemplated.

You refer to a letter, dated February 22, 1988, from an attorney representing the estate of the deceased involved in the accident. You argue that this letter indicates that "[the attorney] intends to sue the contractor and property owner involved in the accident." Upon careful review of this letter, we have determined that the portion of the letter that most "threatens" potential litigation states: "You are accordingly advised that we hold an interest in any and all causes of action arising out of this accident." We do not believe that any portion of this letter indicates that litigation is realistically being contemplated by any of the parties involved in the accident.

Further, we do not believe that any of the documents you have submitted for review sufficiently satisfies the requirements of section 3(a)(3) to withhold the requested information from disclosure. Consequently, you must release the information sought by the requestor.

If you have questions about this ruling, please refer to OR89-164.

Yours very truly,

Open Government Section
of the Opinion Committee

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of the Opinion Committee
Prepared by Steve Aragon

SA/FAF/bc

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