



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

July 14, 1989

Ms. Victoria Guerra
Assistant Attorney General
General Litigation Division
Texas Attorney General's Office
P. O. Box 12548
Austin, Texas 78711-2548

Dear Ms. Guerra:

This will acknowledge receipt of your letter of April 19, 1989, requesting a decision on the public availability of certain information under the Texas Open Records Act, article 6252-17a, V.T.C.S. The file has been designated ID# 5829.

In a letter dated March 8, 1989, the State Board of Barber Examiners (the board) requested a decision from this office on the availability of any barber inspector reports from Allen Taylor relating to the discharge of a former barber inspector, Louie Armstrong, and any report by Taylor on Paul Gilbert, III. The board raised sections 3(a)(3) and 3(a)(11) of the Open Records Act as exceptions to public disclosure of such reports). In a letter dated April 11, 1989, this office determined that the board had not made the requisite showing necessary under section 3(a)(3) to withhold the information from the requestor. However, we provided you with additional time to submit evidence that a lawsuit is realistically being contemplated and that the board 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 them, if release of the information might adversely affect the litigation interests or strategy of the entity. Attorney General Opinion No. H-483 (1974); Open Records Decision No. 416 (1984). The section contemplates that information relating to pending or anticipated litigation will be sought through the judicial discovery process. Open Records Decision No. 288 (1981). A governmental body can establish that litigation is "pending" by submitting a copy of the

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pleadings in a court case, which you have done. The requestor has filed a civil rights action in federal court claiming that he was terminated in violation of his due process rights. The pleadings allege bias and prejudice in the composition of the grievance board that ultimately discharged him. The requested information clearly relates to the pending litigation as the report may be interpreted to touch on these matters raised in the federal complaint. Its disclosure might adversely affect the board's litigation interests in those issues. We conclude that the requirements of section 3(a)(3) have been satisfied; you may withhold the requested information.

Given our conclusion that section 3(a)(3) applies in this case, we do not address whether section 3(a)(11) also applies to the information at issue. If you have questions about this ruling, please refer to OR89-208.

Yours very truly,

*Open Government Section
of the Opinion Committee*
Open Government Section
of the Opinion Committee
Approved by David A. Newton
Assistant Attorney General

DAN/FAF/bc

Ref.: ID# 5829
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6401

cc: Ms. Jo King McCrorey
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