



THE ATTORNEY GENERAL
OF TEXAS

JIM MATTOX
ATTORNEY GENERAL

November 26, 1990

Mr. Thomas G. Mason
Deputy General Counsel
Lower Colorado River Authority
P.O. Box 220
Austin, Texas 78767

OR90-557

Dear Mr. Mason:

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# 10881.

The Lower Colorado River Authority (the authority) received an open records request for, inter alia, "documents relating to the basis for LCRA's assertions that treatment of Austin's wastewater effluent to a 5-5-2 level and/or removal of nutrients from the City's effluent is necessary for water quality of the Colorado River." You state that the authority has released much of the requested information to the requestor. You seek, however, to withhold drafts and final versions of certain intra-agency memoranda, reports, and correspondence pursuant to sections 3(a)(3) and 3(a)(11) of the Open Records Act.

You have submitted for our inspection six file folders labeled A through F. File folders A, B, and E contain drafts of correspondence, intra-agency memoranda, and reports, the final versions of which were either made public or were never sent to the proposed recipients. You state that any factual material contained in the drafts of the previously released material is either contained in the final released version or has otherwise been released pursuant to the open records request. The remaining information contained in the draft documents consist of advice, opinion, and recommendation used by the authority in its decision-making process; as such this information comes under the protection of section 3(a)(11), see Open Records Decision No. 559 (1990), and may therefore be withheld. Section 3(a)(11) also protects the contents of file folders C and D to the extent that they contain similar types of documents.

To secure the protection of section 3(a)(3), a governmental body must first demonstrate that a judicial or quasi-judicial proceeding is pending or reasonably anticipated. Open Records Decision No. 452 (1986). To demonstrate that litigation is reasonably anticipated, the governmental body must furnish evidence that litigation involving a specific matter is realistically contemplated and is more than mere conjecture. Id. Further, the governmental body's attorney must show that the requested material relates to the litigation. See Open Records Decision No. 323 (1982).

You contend that the documents contained in file folders C and D come under the protection of section 3(a)(3) because they directly pertain to a Texas Water Commission waste water permit hearing in which the authority intends to contest the renewal of an existing permit held by the city of Austin. The permitting process is a contested case procedure pursuant to the Administrative Procedure and Texas Register Act, article 6252-13a, V.T.C.S., which provides for discovery between parties. See id. § 14.

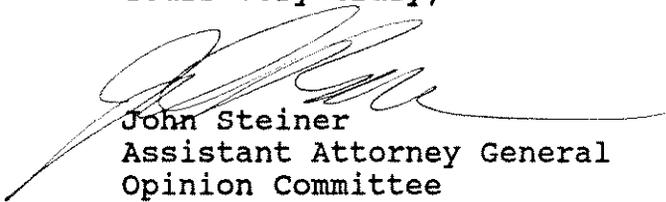
Because section 3(a)(3) protection extends to information relating to contested cases before administrative agencies, see Open Records Decision No. 301 (1982), you may withhold the remaining information contained in file folders C and D pursuant to section 3(a)(3). See also Open Records Decision No. 551 (1990). We assume, however, that none of the information in file folders C and D has previously been made available to the requestor or the permittee. Absent special circumstances, once information has been obtained by all parties to the litigation, e.g. through discovery or by court order, no section 3(a)(3) interest exists with respect to that information. Open Records Decision No. 349 (1982). If the requestor has seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 3(a)(3).

The requestor also seeks a copy of "LCRA's computer model, the Daily Allocation Model (DAM), of reservoir operations and river flows, with data base and documentation." You contend that this information comes under the protection of section 3(a)(10) of the Open Records Act, citing Open Records Decision No. 401 (1983) as authority. This office currently has pending a similar open records request, RQ-2081, in which we may reconsider the rationale used in Open Records Decision No. 401. Consequently, this office will refrain from making a determination on this

aspect of your request until the issues in RQ-2081 are resolved.

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 OR90-557.

Yours very truly,



John Steiner
Assistant Attorney General
Opinion Committee

JS/RWP/le

Ref.: ID# 10881
ID# 10975
ID# 11045

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