



Office of the Attorney General
State of Texas

March 25, 1992

DAN MORALES
ATTORNEY GENERAL

Ms. Dealey Herndon
Executive Director
State Preservation Board
P. O. Box 13286
Austin, Texas 78711

OR92-113

Dear Ms. Herndon:

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# 14980.

The State Preservation Board (the "board") has received a request for all information regarding alleged wage scale violations by Victoria Air Conditioning on the Capital Extension Project, including any audit report and all documentation or other information pertaining to the audit. You have submitted a number of memoranda and a portion of a hearing transcript for our review. You claim that this information is protected from disclosure by sections 3(a)(3), 3(a)(11), and 3(a)(16) of the act.

With respect to section 3(a)(3), you assert that the requested information relates to a prevailing wage dispute pending before the board. Section 3(a)(3) exempts from mandatory disclosure:

Information relating to litigation of a criminal or civil nature
and settlement negotiations, to which the state or political
subdivision is, or may be, a party . . .

Information may be excepted from disclosure if litigation is pending or reasonably anticipated and the information relates to the litigation. Open Records Decision No. 551 (1990). Open Records Decision No. 588 (1991) concluded that a contested case held under the Texas Administrative Procedure and Texas Register Act, V.T.C.S. art. 6252-13a, ("APTRA") is "litigation" within the section 3(a)(3)

exception. You have not demonstrated that the board's investigation and proceedings regarding alleged wage scale violations by Victoria Air Conditioning constitute a contested case under APTRA nor have you demonstrated that litigation between the board and Victoria Air Conditioning is otherwise "reasonably anticipated." Accordingly, the material cannot be withheld under section 3(a)(3).

You appear to claim that the board's "audit working papers" are excepted from disclosure under section 3(a)(16). Section 3(a)(16) excepts only the actual working papers of the State Auditor. Thus, the board's working papers are not excepted by that provision. The memorandum dated January 31, 1992, on Office of State Auditor letterhead, however, appears to relate to an audit by the State Auditor and to have been generated by the State Auditor. It may be withheld.

Finally, you claim that the requested material is excepted under section 3(a)(11), which excepts advice, opinion or recommendation that is used in the deliberative process. Open Records Decision No. 574 (1990). Facts and written observations of facts and events, when such information is separable from advice, opinion as recommendation, may not be withheld under section 3(a)(11). We have reviewed the remainder of the documents submitted with your request. None of these documents contain advice, opinion or recommendation. Therefore, they must be released.

Because case law and prior published open records decisions resolve your request, we are closing 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 OR92-113.

Yours very truly,



Mary R. Crouter
Assistant Attorney General
Opinion Committee

MRC/nhb

Ref: ID# 14980

cc: Vella M. Fink
Van Os, Deats, & Ownes, P.C.
900 Congress Avenue, Suite 400
Austin, Texas 78701