



Office of the Attorney General
State of Texas

March 27, 1992

DAN MORALES
ATTORNEY GENERAL

Ms. Karen W. Osborne
Assistant General Counsel
Legal Affairs Division
Texas Department of Criminal Justice
Institutional Division
P.O. Box 99
Huntsville, Texas 77342-0099

OR92-117

Dear Ms. Osborne:

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# 14917.

You have received a request from an inmate of the Texas Department of Criminal Justice Institutional Division (the "department") for records relating to his medical treatment. Specifically, the requestor seeks "all records pertaining to my requests for sex offender treatment and the responses to those requests, as well as any and all records pertaining to my need for treatment." Although the requestor seeks the information pursuant to article 4590i, V.T.C.S., we will consider the availability of the requested information under the Open Records Act. You advise us that you will release to the requestor his medical records and correspondence which has previously been made available to him. You have submitted to us for review, however, an affidavit and a "S.O.T.P. SCREENING FORM" which you claim are exempted from required public disclosure by section 3(a)(3) of the Open Records Act.

Previous open records decisions issued by this office resolve your request. Section 3(a)(3) excepts

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, or to which an officer or

employee of the state or political subdivision, as a consequence of his office or employment, is or may be a party, that the attorney general or the respective attorneys of the various political subdivisions has determined should be withheld from public inspection.

Section 3(a)(3) applies only when litigation in a specific matter is pending or reasonably anticipated and only to information clearly relevant to that litigation. Open Records Decision No. 551 (1990). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 (1986) at 4.

The department has received notice of the requestor's claim against the State of Texas for alleged medical malpractice and negligence pursuant to section 4.01(a) of the Medical Liability and Insurance Improvement Act, article 4590i, V.T.C.S. You have submitted the notice of claim for our review. It asserts that the State of Texas is liable for damages because of failure to provide the requestor sex offender treatment or counseling. On the basis of this notice of claim, we conclude that litigation may be reasonably anticipated. Having examined the documents submitted to us for review, we further conclude that the requested information relates to the anticipated litigation and may be withheld from required public disclosure under section 3(a)(3) of the Open Records Act. Please note that this ruling applies only for the duration of the litigation and to the documents at issue here.

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 OR92-117.

Yours very truly,



Mary R. Crouter
Assistant Attorney General
Opinion Committee

MRC/GK/nhb

Ref.: ID# 14917
ID# 14975
ID# 15201

cc: Mr. Barry Wion
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