



## Office of the Attorney General

State of Texas

March 30, 1992

DAN MORALES

ATTORNEY GENERAL

Mr. James L. Hall  
Contract Attorney  
Texas Department of Criminal Justice  
Institutional Division  
P. O. Box 99  
Huntsville, Texas 77342-0099

OR92-133

Dear Mr. Hall:

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# 14941.

You have received a request for twelve categories of information relating to a construction project undertaken by Manhattan Construction Company (the "company") for the Texas Department of Criminal Justice (the "department"). Generally, the requestor seeks documents, studies, proposals, investigation results, soil tests results, department memoranda and communications, architectural and design plans, contracts between the department and certain other contractors, and other information relating to the construction project. You claim that the requested information is excepted from required public disclosure by section 3(a)(3) and that portions of it are excepted by section 3(a)(11).

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.

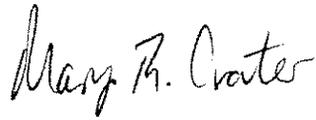
In a letter dated November 13, 1991, the company requested a meeting during which the two parties might "amicably" resolve their dispute. The company provided, however:

If we cannot reach a satisfactory solution within fifteen (15) days from your receipt of this letter, I will have no alternative other than to refer the matter to Manhattan's attorneys for legal action. I would take such a step only as a last resort; however, Manhattan cannot and will not absorb a \$4,667,050.00 loss to pay for mistakes it did not create and could not control.

You advise us that the parties, to date, have been unable to resolve this dispute. On the basis of this letter, 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 until the resolution of litigation and to the documents at issue here. As we resolve this matter under section 3(a)(3), we need not address the applicability of section 3(a)(11) at this time.

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 OR92-133.

Yours very truly,



Mary R. Crouter  
Assistant Attorney General  
Opinion Committee

MRC/GK/nhb

Ref.: ID# 14941  
ID# 15104  
ID# 15308

cc: Mr. Curtis R. Ferguson  
Senior Vice President - Construction  
Manhattan Construction Company  
2120 Montrose Boulevard  
Houston, Texas 77006  
(w/o enclosures)