



Office of the Attorney General
State of Texas

April 14, 1992

DAN MORALES
ATTORNEY GENERAL

Ms. Cathy L. Meyer
Senior Assistant City Attorney
City of Irving
P. O. Box 152288
Irving, Texas 75060

OR92-136

Dear Ms. Meyer:

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# 15269.

You have received a request for information relating to the effects of foreign matter, such as sand and soil, on City of Irving (the "city") road surfaces. Specifically, the requestor seeks four categories of information, including the types of sand and soil used by the city on its roads, the reasons for use of sand and soil by the city departments, and certain maintenance records for "the intersections of Walton Walker Blvd. (Loop 12) and Irving Blvd. (S.H. 356), including medians for the specific week of July 29, 1991 thru August 4, 1991." You claim that the requested information is excepted 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 city has received notice of a motorcyclist's claim against the city for damages arising out of an August 2, 1991, accident allegedly caused by sand placed on an oil spill at the intersection of Walton Walker and Irving Boulevards. You have submitted the notice of claim for our review. It asserts that the city is liable for damages because loose sand on the roadway caused the motorcyclist to lose control of his vehicle. 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 until the resolution of the matter 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 OR92-136.

Yours very truly,



Mary R. Crouter
Assistant Attorney General
Opinion Committee

MRC/GK/lmm

Ref.: ID# 15269
ID# 15303

cc: Mr. Fred L. Svidlow
F.L.S. & Associates
6565 McCallum Boulevard
Suite 150
Dallas, Texas 75252