



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 17, 1992

Mr. John Hoeft
General Counsel
Dallas Area Rapid Transit
601 Pacific Avenue
Dallas, Texas 75202

OR92-343

Dear Mr. Hoeft:

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# 15941.

The Dallas Area Rapid Transit (DART) has received seven open records requests. The requestor primarily seeks various documents that are part of a pending Dallas County Grand Jury investigation and lawsuit. This suit, which a councilmember has brought against DART and others, is "based upon the resignation of [DART's] former Executive Director Charles Anderson and the terms of his departure." You state that DART has provided to the requestor the information sought in Request Number 1. However, you object to disclosing the information sought in the remaining six requests and claim exemption from such disclosure under sections 3(a)(1) and 3(a)(3) of the Open Records Act.

Request Number 4 requests, *inter alia*, "copies of all records concerning DART's standard procedure for signing and authorizing checks and . . . procedure in connection with Anderson's severance." Any documents you currently have in your possession which relate to DART's procedure, rules, and methods are public information. Open Records Decision No. 555 (1990); V.T.C.S. art. 6252-17a, §§ 6(8), (9), (10), (13), (14). Accordingly, you must release such documents to the requestor.

Section 3(a)(3) (the "litigation exception") 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.

Previous open records decisions issued by this office resolve Requests numbered 2, 3, 5, 6, 7, and the remainder of Number 4. 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 Nos. 555, 551 (1990). Section 3(a)(3) also forces parties to a lawsuit to obtain relevant information through the normal process of discovery. Open Records Decision No. 551 at 4.

We have considered the 3(a)(3) exception that you claim. On or about March 28, 1992, DART, its Board Chairman, and former Executive Director became parties to a suit. This suit by the councilmember was based on the resignation of Mr. Charles Anderson and the terms of his departure. On or about April 20, 1992, DART was served with "subpoenas in conjunction with an investigation being conducted by the Dallas County Grand Jury and the State Auditor's office and Inspector General's office of the Department of Transportation." You further state that the "Court Order authorizing the issuance of this information precludes the public disclosure of the information requested" in Request Number 3. We agree. After reviewing the documents at issue that you submitted to us, we conclude that all relate to the pending litigation. Consequently, unless the requested information has been previously disclosed to the requestor, *e.g.*, through discovery or by court order, you may withhold such information 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 at issue 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)(1) 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 OR92-343.

Yours very truly,



Kym Oltrogge
Assistant Attorney General
Opinion Committee

KO/HJ/lmm

Ref.: ID# 15941
ID# 15942
ID# 15949
ID# 15978
ID# 15986
ID# 16013

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