



Office of the Attorney General
State of Texas

July 16, 1992

DAN MORALES
ATTORNEY GENERAL

Mr. A. Kent McCulloch
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Austin, Texas 78701-4039

OR92-399

Dear Mr. McCulloch:

As counsel for Capital Metro, you ask whether certain information is subject to required public disclosure under the Texas Open Records Act, V.T.C.S. article 6252-17a. Your request was assigned ID# 15446.

In January 1992, Capital Metro terminated the employment of Crayton Awtry. Capital Metro has received an Open Records Act request from Awtry's counsel for public disclosure of: various documents reflecting or referring to Capital Metro personnel policies (Items 2-6); Awtry's time records for work performed while employed with Capital Metro (Item 7); and the productivity records for Capital Metro buyers. Capital Metro claims that this information is excepted from required public disclosure by Open Records Act section 3(a)(3).

Section 3(a)(3) of the Act excepts from required public disclosure

information relating to litigation of a criminal or civil nature and settlement negotiations, to which the state or a political subdivision 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) is intended to allow a government agency to protect its position in litigation by forcing parties seeking information relating to that litigation to obtain it through discovery, if at all. Open Records Decision No. 551 (1990). For information to be excepted from public disclosure by section 3(a)(3), litigation must be pending or reasonably anticipated and the information must relate to that

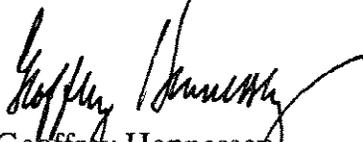
litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.).

On January 27, 1992, Awtry filed a charge of discrimination with the Texas Commission on Human Rights against Capital Metro alleging that Capital Metro discriminated against him on the basis of a physical disability. In a letter dated February 20, 1992, Awtry's counsel advised Capital Metro that its settlement offer was not adequate and proposed a counter-offer; this letter concluded with the following warning: "If we cannot bridge the considerable gap as to the settlement value of this matter, it seems clear that we must insist that the Texas Commission on Human Rights continue its investigation into Mr. Awtry's charge against Capital Metro and we must commence litigation in earnest." We conclude from this that litigation can be reasonably anticipated.

We have reviewed the documents submitted for our review, and have concluded that the requested information and the responsive documents relate to the pending litigation. Therefore, the information may be withheld pursuant to section 3(a)(3). Please note that this ruling applies only until the resolution 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 OR92-399.

Very truly yours,


Geoffrey Hennessey
Assistant Attorney General
Opinions Committee

GH/lmm

Ref.: ID# 15446

cc: Mr. Bruce Bigelow
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