



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

November 5, 1992

Ms. Elizabeth S. Horn  
Associate General Counsel  
Dallas Housing Authority  
2525 Lucas Drive  
Dallas, Texas 75219

OR92-640

Dear Ms. Horn:

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# 17130.

The Dallas Housing Authority (the "authority") has received from a fair housing agency a request for "all complaints or allegations filed by any person or entity regarding the Military Parkway Project, its residents, resident's activities, and/or guests." The fair housing agency also seeks the authority's responses to any of these complaints. You state that the requested information is excepted from required public disclosure by section 3(a)(3) of the act.

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.

V.T.C.S. art. 6252-17a, § 3(a)(3). This exception enables a governmental body 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) at 3. Consequently, it applies only when litigation in a specific matter is

pending or reasonably anticipated and only to information relevant to that litigation. Open Records Decision Nos. 555, 551 (1990). "Litigation" for section 3(a)(3) purposes encompasses proceedings conducted in quasi-judicial forums as well as in strictly judicial ones. *See* Open Records Decision No. 588 (1991).

You inform us that the fair housing agency has, on behalf of several families residing within the Military Parkway Project (the "project"), a public housing development, formally filed administrative Housing Discrimination Complaints with both the United States Department of Housing and Urban Development ("HUD") and the City of Dallas Fair Housing Office against the authority.

This office has held in several prior decisions that the pendency of a complaint before the Equal Opportunity Commission ("EEOC") establishes that litigation is reasonably anticipated. *See, e.g.,* Open Records Decision Nos. 386 (1983), 326 (1982), 266 (1981). The federal regulations applicable to the filing, investigation, and conciliation of HUD complaints are similar to those applicable to the filing, investigation, and settlement of EEOC complaints. *Compare* 24 C.F.R. §§ 103.10-103.335 *with* 29 C.F.R. §§ 1601.6-1601.18, 1601.20, 1601.24. Furthermore, both the HUD and the EEOC regulations authorize the federal government to institute civil action for preliminary or temporary relief in certain instances. 24 C.F.R. § 103.500 (HUD); 29 C.F.R. § 1601.23 (EEOC). Finally, both regulations authorize in certain instances the commencement of a civil action against the responding party after a finding of reasonable cause to believe the complainant's charges true. *See* 24 C.F.R. § 103.410 (authorizing HUD complainant to elect commencement of civil action by attorney general after determination of reasonable cause); 29 C.F.R. § 1601.28(b) (authorizing EEOC complainant to bring civil action after determination of reasonable cause, failure of conciliation and decision of commission not to bring action itself). We are advised that the HUD investigations of the complaints are on-going. Given this fact and the decisions and regulations discussed above, we conclude that the pendency of the HUD complaints establishes that litigation is reasonably anticipated here.

We have reviewed the representative samples that you submitted to us for review. Some of the sample documents contain information not responsive to the request, and thus, this ruling does not address the release of such information under the Open Records Act. We have marked the nonresponsive portions. With regard to the responsive information, you may not withhold under section 3(a)(3) any information to which the complainants have previously obtained access, by discovery or otherwise. *See* Open Records Decision Nos. 463 (1987); 349 (1982). For

instance, you may not withhold the authority's first amended original answer, the HUD complaints, and notices of "special meetings with all heads of households," or other documents previously sent to the authority by the complainants or provided by the authority to the complainants. The remaining responsive information may be withheld pursuant to section 3(a)(3).

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 OR92-640.

Yours very truly,



Celeste A. Baker  
Assistant Attorney General  
Opinion Committee

CAB/HJ/lmm

Enclosures: Submitted documents  
Open Records Decision No. 386

Ref.: ID# 17130  
ID# 17391  
ID# 17576

cc: Mr. Craig S. Gardner  
Executive Director  
The Walker Project, Inc.  
1140 Empire Central, Suite 330  
Dallas, Texas 75247  
(w/o enclosures)