



Office of the Attorney General  
State of Texas

November 23, 1992

DAN MORALES  
ATTORNEY GENERAL

Ms. Jackee Cox  
General Counsel  
Texas Department of Criminal Justice  
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Mr. Robert Ozer  
Assistant Attorney General  
Civil Rights Division  
Office of the Texas Attorney General  
P.O. Box 12548  
Austin, Texas 78711-2548

OR92-668

Dear Ms. Cox and Mr. Ozer:

The Texas Department of Criminal Justice (TDCJ) and the Civil Rights Division of the Office of the Attorney General have asked whether certain information is subject to required public disclosure under the Open Records Act, V.T.C.S. article 6252-17a. Your request was assigned ID # 15192.

Pursuant to the Open Records Act, the City of Houston has requested that TDCJ provide, among other things, the following information:

4. All . . . information showing the actual number of parolees, probationers, inmates, or clients housed or served by parole, pre-parole, probation or mandatory supervision facilities funded in whole or in part by the State of Texas in Houston, Texas; [and]
6. All . . . information showing the number and category of offenses, other than Class C misdemeanors, committed by the parolees, probationers, inmates, detainees or clients of the state-operated or state-funded parole, pre-parole, probation or mandatory supervision facilities located in Houston, Texas.

TDCJ claims that section 3(a)(1) of the act, construed in conjunction with article 42.18, section 18 of the Code of Criminal Procedure, excepts from required public disclosure the information item 6 requests. The Civil Rights Division of the Office of the Attorney General contends that section 3(a)(3) of the Open Records Act excepts from required public disclosure the information items 4 and 6 request.

Open Records Act section 3(a)(3) excepts from required public disclosure

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, . . . 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 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). 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.).

In 1972, inmates and former inmates of the Harris County jail filed a civil rights class action lawsuit against Harris County for alleged overcrowding and other unconstitutional conditions at the county jail. See *Alberti v. Sheriff of Harris County v. Richards*, CA-H-72-1094 (S.D. Tex., Houston Div.). In 1989 Harris County impleaded the governor, the director of the Texas Department of Corrections (now TDCJ), and members of the Board of Corrections. The original plaintiffs subsequently filed a supplemental complaint against the third-party defendants, members of the Board of Pardons and Paroles, and the state.

We are informed that the lawsuit is still pending. The Civil Rights Division of the Office of the Attorney General claims that the information in items 4 and 6 relates to the *Alberti* litigation and that disclosure of this information would be detrimental to the state's position in that litigation. We agree. We conclude, therefore, that section 3(a)(3) authorizes TDCJ to withhold the information items 4 and 6 request. Please note that this ruling applies only until the resolution of the matter and to the documents at issue here. As we resolve this matter under section

3(a)(3), we need not address TDCJ's claim that section 3(a)(1) authorizes it to withhold the information Item 6 requests.

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 OR92-668.

Very truly yours,



Kimberly K. Oltrogge  
Assistant Attorney General  
Opinions Committee

KKO/lmm

cc: Mr. Benjamin L. Hall, III  
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