



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 9, 1992

Mr. Jesús Garza
Executive Director
Texas Water Commission
P. O. Box 13087
Austin, Texas 78711-3087

OR92-689

Dear Mr. Garza:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), article 6252-17a, V.T.C.S. Your request was assigned ID# 16907.

The Texas Water Commission (the "commission") has received a request for all "records pertaining to Hazcorp Environmental" in the possession of the commission, especially with respect to "LPST [site] Nos. 97017, 92212 and 92880." The requestor has subsequently narrowed the request to information relating to the above three LPST job sites. You assert that the responsive documents¹ are excepted from required public disclosure under section 3(a)(3) of the act.

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.

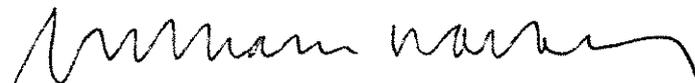
¹Documents were submitted that are not relevant to the request. Because these documents have not been requested under the act, they are being returned without a ruling on their availability to the public.

V.T.C.S. art. 6252-17a, § 3(a)(3). The litigation exception applies only when litigation in a specific matter is pending or reasonably anticipated and only to information relevant to that litigation. Open Records Decision No. 551 (1990). 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. *Id.*

We have considered the 3(a)(3) exception that you claim and have reviewed the representative samples of documents submitted to us. The commission has referred Hazcorp to the Environmental Protection Division of the office of the attorney general for civil litigation in connection with allegations of "violations of the Code and Commission rules" by Hazcorp. Because Hazcorp is currently under investigation, we conclude that litigation is anticipated for purposes of the section 3(a)(3) exemption. The documents submitted relate to the anticipated litigation. Therefore, unless the requested information previously has been disclosed to the requestor, *e.g.*, through discovery or by court order, you may withhold the requested documents from required public disclosure under section 3(a)(3) of the act.

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 OR92-689.

Yours very truly,



William Walker
Assistant Attorney General
Opinion Committee

WW/HJ/lmm

Ref.: ID# 16907
ID# 17031

Enclosure: Submitted documents

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