



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

February 13, 1989

Mr. Ronald C. Campana
Paul A. Philbin & Assoc., P.C.
6363 Woodway, Suite 725
Houston, Texas 77057

Dear Mr. Campana:

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# 5135. This decision is OR89-49.

Under the Open Records Act, all information held by governmental bodies is open unless the information falls within one of the act's specific exceptions to disclosure. The act places on the custodian of records the burden of proving that records are excepted from public disclosure. If a governmental body fails to claim an exception, the exception is ordinarily waived unless the information is deemed confidential under the act. See Attorney General Opinion JM-672 (1987). The act does not require this office to raise and consider exceptions that you have not raised.

The Palmer Plantation Municipal Utility District No. 1 received a request for records pertaining to a civil lawsuit in which the district is a codefendant. You state that the documents you have submitted to this office are not subject to disclosure in court-supervised discovery and contend that section 3(a)(3) of the Open Records Act excepts these documents from required public disclosure.

To secure the protection of section 3(a)(3), a governmental body must first demonstrate that a judicial or quasi-judicial proceeding is pending or reasonably anticipated. Open Records Decision No. 452 (1986). Further, the governmental body's attorney must show that the requested material relates to the litigation, see Open Records Decision No. 323 (1982), such that disclosure of the

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materials would adversely affect the governmental body's litigation interests. Open Records Decision No. 493 (1988).

This office has held that no section 3(a)(3) interest exists with respect to information already obtained by all parties to the litigation. Open Records Decision No. 349 (1982). If the requestor has seen these records, there would be no justification for now withholding that information from the requestor pursuant to section 3(a)(3), as the district would no longer have any litigation interest to protect with regard to that information.

You have not shown that the requested material meets these tests. In order for this office to determine whether the documents you wish to withhold come under the protection of section 3(a)(3), you must, within ten days of receipt of this letter, submit additional arguments as to how they meet the section 3(a)(3) tests outlined above.

Finally, section 6(3) of the Open Records Act expressly makes public information about the expenditure of public funds. Although section 6(3) does not override section 3(a)(3), it heightens a governmental body's burden of showing why information is protected. Open Records Decision No. 514 (1988). Further, section 3(a)(3) does not protect certain factual information fundamental to government operations. See Open Records Decision No. 511 (1988).

If you have questions about this ruling, please refer to OR89-49.

Yours very truly,

*Open Government Section
of the Opinion Committee*

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of the Opinion Committee
Prepared by Jennifer S. Riggs
Chief, Open Government Section

JSR/RWP/bc

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