



**THE ATTORNEY GENERAL  
OF TEXAS**

February 20, 1989

**JIM MATTOX  
ATTORNEY GENERAL**

Mr. T.L. Rees  
Attorney for Colorado City  
P. O. Box 1007  
Colorado City, Texas 79512

Dear Mr. Rees:

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# 5387; this decision is OR89-60.

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 City of Colorado City received a request for the initial police report on the fatal shooting of a rape suspect during arrest. You asserted that the information is exempt from required public disclosure under sections 3(a)(3) and 3(a)(8) of the act. This office agrees that the information is exempt under section 3(a)(3) and does not reach your other argument.

Section 3(a)(3) of the Open Records Act, known as the litigation exception, authorizes governmental bodies to deny requests for information relating to pending or "reasonably anticipated" litigation involving a governmental entity or its officers or employees as well as information relating to settlement negotiations involving such litigation. Heard v. Houston Post Co., 684 S.W.2d 210 (Tex. App. - Houston [1st Dist.] 1984, writ ref'd n.r.e.); Attorney General Opinion H-483 (1974); Open Records Decision No. 331 (1982). To claim section 3(a)(3) the governmental body must show: 1) that litigation is actually pending or reasonably anticipated; and 2) that the information in question relates to the litigation such that withholding the information is

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necessary to preserve the governmental body's strategy or legal interests in the litigation. Open Records Decision No. 478 (1987); see also Open Records Decision No. 416 (1984).

You submitted a copy of a "notice of claim" letter filed by the representative of the deceased suspect's family. The claim is directly related to the suspect's shooting. Because filing notice of a claim is a necessary prerequisite to filing a lawsuit against a city under section 101.101 of the Civil Practices and Remedies Code, it is reasonable to anticipate litigation involving the information requested.

A governmental body must also show that release of the information requested will impair the governmental body's legal strategy or interests. Open Records Decision No. 511 (1988). Because the requested information involves issues raised in the notice of claim letter, premature release of the information could impair the city's litigation strategy. This office therefore holds that the requested information may be withheld under section 3(a)(3).

Much of the information you submitted is beyond the scope of the request letter. This informal opinion does not address the information not specifically requested in the request letter or your letter seeking an open records ruling.

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 OR89-60.

Yours very truly,

*Open Government Section  
of the Opinion Committee* 

Open Government Section  
of the Opinion Committee  
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Assistant Attorney General

PB/bc

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