



**THE ATTORNEY GENERAL  
OF TEXAS**

**JIM MATTOX  
ATTORNEY GENERAL**

February 17, 1989

Mr. Paul Bibler, Jr.  
Assistant City Attorney  
City of Houston  
P. O. Box 1562  
Houston, Texas 77251-1562

Dear Mr. Bibler:

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# 3760 and set up as formal file RQ-1481. We have now determined that the request can be handled with an informal ruling. This decision is OR89-61.

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 Houston Public Works office received a request from Mr. Richard T. Redano, an attorney, for copies of architectural plans submitted to the city by Taco Cabana, Inc. Taco Cabana originally submitted the plans to obtain building permits from the city. The owner of Taco Cabana has refused to give permission for the city to release the copies to Mr. Redano. You ask whether the city is permitted to release the documents under the Open Records Act, specifically, under the principles discussed in Open Records Decision No. 109 (1975). See also Open Records Decision No. 180 (1977). Mr. Redano argues that the plans should be released because the rationale behind Open Records Decision No. 109, on which the city relies, is protection under the

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doctrine of common law copyright, which has been preempted by the federal copyright statute. See 17 U.S.C. § 301.

The question of providing copies of copyrighted materials was addressed in Attorney General Opinion No. MW-307 (1981). The attorney general, in a request for copies of copyrighted maps, discussed the conflicts inherent in providing such copies, stating that the supremacy clause of the United States Constitution prohibits the custodian of records from following the Open Records Act when the act conflicts with copyright law. For this reason, government agencies in Texas must furnish access to but not copies of copyrighted materials to the public under the Open Records Act. Id.

Neither a governmental body subject to the Open Records Act nor the attorney general is in a position to resolve the validity of a colorable claim of copyright protection. For that reason this decision does not address the validity of copyright protection with regard to these records.

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 OR89-61.

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/bc

Ref.: ID# 3760  
ID# 4000  
ID# 4227  
ID# 4097  
ID# 4114  
ID# 4319

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