



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

March 10, 1989

Mr. Edward H. Perry
Assistant City Attorney
City of Dallas
City Hall
Dallas, Texas 75201

Dear Mr. Perry:

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# 5112; this decision is OR89-81.

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 Dallas received an open records request for, inter alia, a draft of a risk management issue paper and a proposal to provide insurance to the city. You contend that subsections 3(a)(4) and 3(a)(11) protect these documents from required public disclosure.

Section 3(a)(11) of the act excepts inter-agency and intra-agency memoranda and letters, but only to the extent that they contain advice, opinion, or recommendation intended for use in the entity's decision-making process. Open Records Decision No. 464 (1987). The purpose of this section is "to protect from public disclosure advice and opinions on policy matters and to encourage frank and open discussion within the agency in connection with its decision-making processes." Austin v. City of San Antonio,

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630 S.W.2d 391, 394 (Tex. App. - San Antonio 1982, writ ref'd n.r.e.).

Section 3(a)(11) does not protect facts and written observation of facts and events that are severable from advice, opinions, and recommendation. Open Records Decision No. 450 (1986). If, however, the factual information is so inextricably intertwined with material involving advice, opinion, or recommendation as to make separation of the factual data impractical, that information may be withheld. Open Records Decision No. 313 (1982). We have marked those portions of the risk management report that you may withhold pursuant to section 3(a)(11).

Section 3(a)(4) of the Open Records Act protects from required public disclosure information which, if released, would give advantage to competitors or bidders. Governmental bodies may withhold this type of information while the governmental officials are in the process of interpreting the proposals and the competitors are free to furnish additional information. Cf. Open Records Decision No. 170 (1977).

Open Records Decision No. 170 governs your request with regard to the insurance proposal; you may, therefore, withhold the proposal at this time pursuant to section 3(a)(4). Please note, however, that section 3(a)(4) does not except bids or proposals from disclosure once the bidding is over and the contract has been awarded, Open Records Decision No. 306 (1982), or where no contract is awarded. Open Records Decision No. 201 (1978).

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 OR89-81.

Yours very truly,

Open Government Section
of the Opinion Committee

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of the Opinion Committee
Prepared by Steve Aragon
Assistant Attorney General

SA/RWP/bc

Enclosures: Marked documents

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Copies to: Robert V. Camuto
City Government Reporter
Dallas Times Herald
1101 Pacific Avenue
Dallas, Texas 75202

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