



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

March 17, 1989

Mr. Robert E. Shaddock
General Counsel
State Department of Highways
and Public Transportation
11th & Brazos
Austin, Texas 78701-2483

Dear Mr. Shaddock:

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# 5690 this decision is OR89-91.

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 State Department of Highways and Public Transportation received a request from Mr. Jerry M. Kolander, Jr., for appraisals of a specific piece of property, specifically for information about the inclusion of equipment and property belonging to West Texas Millworks in the appraisal. The department claims that section 3(a)(5) of the Open Records Act protects the requested information from required disclosure. Section 3(a)(5) protects, among other things, "information pertaining to appraisals . . . of real property . . . for public purposes prior to the formal award of contracts therefor." We have reviewed the information at issue and determine that section 3(a)(5) applies.

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This conclusion does not mean, however, that no other provision of law, state or federal, gives the requestor a special right of access to the information. This decision concludes only that the information is not public under the Open Records 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 OR89-91.

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# 5690

cc: Jerry M. Kolander, Jr., P.C.
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