



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

April 13, 1989

Mr. Edward H. Perry
Assistant City Attorney
Office of the City Attorney
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# 5813; this decision is OR89-125.

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.

You ask whether section 3(a)(3) of the Open Records Act protects two documents that were attached to your letter. These documents exhibits C and D, respectively contain information that relates to an accident claim filed against the City of Dallas. You state that the information in these exhibits is work product and privileged party communication.

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. 416 (1984). The intent of the exception is to protect the litigation interests of an entity that is or is about to be involved in a lawsuit. To secure the protection of this exception, a

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governmental body must first demonstrate to the attorney general that a judicial or quasi-judicial proceeding is pending or is reasonably anticipated, Open Records Decision Nos. 452 (1986), 360 (1983); that the requested material is relevant to the litigation, Open Records Decision No. 323 (1982); and that disclosure of the material would adversely affect the governmental body's litigation interests, Open Records Decision No. 478 (1987). We have reviewed the information in question and determined that it meets these tests. Therefore, Exhibits C and D may be withheld under section 3(a)(3).

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 decision, please refer to OR89-125.

Yours very truly,

*Open Government Sect
of the Opinion Committee* 

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

JSR/MAK/bc

Ref.: ID# 5813

cc: Joe Smith
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