



**THE ATTORNEY GENERAL  
OF TEXAS**

April 25, 1989

**JIM MATTOX  
ATTORNEY GENERAL**

Mr. Howard Weaver  
Director of Personnel  
City of Richardson  
P. O. Box 830309  
Richardson, Texas 75083

Dear Mr. Weaver:

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# 6037; this decision is OR89-140.

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 Richardson received a request for information concerning "the composition of the Richardson Police Department," specifically, the "age, race and national origin" of the employees. You inform us that the requestor is an unsuccessful applicant for employment with the Richardson Police Department who has filed an employment discrimination complaint with the Equal Employment Opportunity Commission (E.E.O.C.). You assert that the requested information is protected from disclosure under section 3(a)(3) of the Open Records Act.

Section 3(a)(3) is applicable where "litigation is pending or reasonably anticipated in regard to a specific matter as opposed to a remote possibility among a group or classification." Open Records Decision Nos. 311 (1982); 132 (1976). In previous opinions, the attorney general has determined that a political subdivision may successfully invoke section 3(a)(3) where a complaint against it is pending before the E.E.O.C. Open Records Decision Nos. 326

Mr. Howard Weaver  
April 25, 1989  
Page 2

(1982); 266 (1981). None of these previous decisions, however, has closed information specifically designated as public under the act.

Section 6(2) of the act specifically makes public "the names, sex, ethnicity, salaries, title, and dates of employment of all employees and officers of governmental bodies." Although this provision does not override the section 3(a)(3) exceptions, it makes it less likely that they will apply. The information the requestor seeks is public information.

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 OR89-140.

Yours very truly,

*Open Government Section*  
*of the Opinion Committee*

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

JSR/FAF/bc

cc: Santos (Tony) Badillo  
3122 Jerome  
Dallas, Texas 75223

Ref.: ID# 6037