



THE ATTORNEY GENERAL  
OF TEXAS

JIM MATTOX  
ATTORNEY GENERAL

May 19, 1989

Tracy A. Pounders  
Office of the City Attorney  
City Hall  
Dallas, Texas 75201

Dear Mr. Pounders:

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# 5861; this decision is OR89-149.

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 Dallas Water Utilities Department has received a request for copies of "any test and lab samples taken at the National Waste facility" and "any correspondence between National Waste and Dallas Water Utilities from January 1987 through the present."

In OR88-131, this office reviewed correspondence between the Dallas Water Utilities Department and National Waste Disposal Companies (NWDC) as well as laboratory test results taken at the NWDC facility pursuant to a similar request for copies. After receiving a detailed explanation of the measures taken by NWDC to keep that information confidential, this office determined the information could be withheld under section 3(a)(10) of the Open Records Act. You argue that the information you have now submitted should be given the same protection under section 3(a)(10).

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Section 3(a)(10) protects "trade secrets and commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision." We agree that some of the information you have submitted is protected under section 3(a)(10). Specifically, the correspondence between NWDC, the City of Dallas and related entities as well as the laboratory test results should be protected. This information is sufficiently similar to the type of information this office determined to be protected in OR88-131. The portions of the information that may be withheld have been marked.

However, the remainder of the information consists of a proposal for services and supplies from Enviro-Systems, Inc., a related brochure and published articles on waste disposal systems. Information in a proposal such as a general description of available services, products and the procedures used to implement them, program goals and performance indicators, and program cost estimates is not protected under section 3(a)(10). Open Records Decision No. 184 (1978). Decision OR88-131 indicated that section 3(a)(10) does not protect information that has been voluntarily published in industry-related journals. Matters of general knowledge in an industry cannot be protected under section 3(a)(10). Open Records Decision No. 232 (1979). The service proposal and its related brochure as well as the published articles on waste disposal systems included in the information you have submitted are not protected under the Open Records Act and must be released.

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 OR89-149.

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

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cc: Jency Hills  
President  
Enviro-Waste Management, Inc.  
11115 Goodnight  
Dallas, Texas 75229

Ref.: ID# 5861

Enclosures