



THE ATTORNEY GENERAL  
OF TEXAS

JIM MATTOX  
ATTORNEY GENERAL

June 13, 1989

Mr. Michael A. Bucek  
Assistant City Attorney  
City of Irving  
P.O. Box 152288  
Irving, Texas 75015-2288

Dear Mr. Bucek:

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# 6455; this decision is OR89-180.

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 Irving received a request from a city firefighter for his entire personnel file. The firefighter has a claim for workers compensation pending before the Texas Industrial Accident Board. You claim that section 3(a)(3) protects the information from required public disclosure.

To claim section 3(a)(3) the governmental body must show: 1) that litigation is actually pending or reasonably anticipated, and 2) that the information in question relates to the litigation such that withholding the information is necessary to preserve the governmental body's strategy or legal interests in the litigation. Open Records Decision No. 478 (1987). See Open Records Decision Nos. 416 (1984); 180 (1977); 135 (1976). The term "litigation" embraces contested cases before administrative agencies as well as

Mr. Michael A. Bucek  
June 13, 1989  
Page 2

court cases. Open Records Decision Nos. 368 (1983); 301 (1982); see also Open Records Decision No. 336 (1982).

We have reviewed the information at issue and have determined that section 3(a)(3) protects it from required public disclosure. This does not mean, however, that the requestor cannot obtain the information through the administrative discovery process or through a special right of access created and governed by statutes other than the Open Records Act. See Attorney General Opinion JM-1048 (1989). This office lacks authority to enforce rights of access granted by or governed by statutes other than 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 OR89-180.

Yours ~~Open~~ truly,  
Open Government Section  
of the Opinion Committee *JR*

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

JSR/bc

Ref.: ID# 6455

Enclosure: JM-1048