



**THE ATTORNEY GENERAL  
OF TEXAS**

July 6, 1989

**JIM MATTOX  
ATTORNEY GENERAL**

Ms. Vicki McFarland  
Secretary  
Manor Volunteer Fire Department  
P. O Box 371  
Manor, Texas 78653

Dear Ms. McFarland:

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# 6763; this decision is OR89-192.

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 Manor Volunteer Fire Department (the department) received an open records request for copies of all minutes of the department's business meetings and board of directors meetings held from March 20, 1989 through and including June 7, 1989. You state that the department released to the requestor all of the requested minutes of the regular business meetings. You contend, however, that "insasmuch that Board of Directors meetings are considered an executive session and are not open to the public and are attended by Board of Directors only," these minutes may be withheld.

The certified agendas of executive sessions of "governmental bodies," as that term is defined by the Texas Open Meetings Act, see V.T.C.S. article 6252-17, § 1(c), and are not subject to public disclosure. V.T.C.S. art. 6252-17, § 2A(c); Open Records Decision No. 495 (1988). This letter ruling does not address whether the department is subject to the Open Meetings Act, but assuming arguendo that it is not, the confidentiality provisions of the Open Meetings Act would not apply to "executive" meetings of the department.

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See Open Records Decision No. 491 (1988) (copy enclosed). You may not, therefore, withhold the minutes on these grounds.

Although you cite none of the act's specific exceptions to required public disclosure, you claim that the minutes "may be used in pending litigation by the individual requesting the information." We assume by this reference to "litigation" that you intend to raise section 3(a)(3) of the Open Records Act, the litigation exception. Section 3(a)(3) exempts from required public disclosure information relating to litigation of a civil or criminal nature to which the state or a political subdivision is, or may be, a party.

To secure the protection of section 3(a)(3), a governmental body must first demonstrate that a judicial or quasi-judicial proceeding is pending or reasonably anticipated. Open Records Decision No. 452 (1986). The mere chance of litigation will not trigger the 3(a)(3) exception. Open Records Decision No. 328 (1982). To demonstrate that litigation is reasonably anticipated, the governmental body must furnish evidence that litigation involving a specific matter is realistically contemplated and is more than mere conjecture. *Id.* Further, the governmental body's attorney must show that the requested material relates to the litigation such that disclosure of the materials would adversely affect the governmental body's litigation interests. Open Records Decision No. 493 (1988); Open Records Decision No. 323 (1982).

You have not shown that the requested material meets these tests. You must release this 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 OR89-192.

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/RWP/bc

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cc: Rebecca Sue Gardner  
EMS Captain  
Manor Volunteer Fire Department  
and EMS First Responders  
P. O. Box 371  
Manor, Texas 78653

Ref.: ID# 6763

Enclosure: ORD-491