



**THE ATTORNEY GENERAL  
OF TEXAS**

**JIM MATTOX  
ATTORNEY GENERAL**

July 14, 1989

Mr. Brad Neighbor  
First Assistant City Attorney  
City of Garland  
P. O. Box 469002  
Garland, Texas 75046-9002

Dear Mr. Neighbor:

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# 6613; this decision is OR89-205.

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 Garland received a request for the draft of a proposed lease/license agreement under negotiation between the city and the Spring Creek Forest Preservation Society regarding the use, occupancy, and maintenance of a forest preserve held by the city through the Dallas County Open Space Program. You assert that section 3(a)(5) of the Open Records Act protects the draft from required public disclosure.

Section 3(a)(5) excepts:

information pertaining to the location of real or personal property for public purposes prior to public announcement of the project, and information pertaining to appraisals or purchase price of real or personal property

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for public purposes prior to the formal award  
of contracts therefor. (Emphasis added.)

Section 3(a)(5) applies to the lease price as well as the purchase price of public property. Open Records Decision No. 348 (1982).

The purpose of section 3(a)(5), however, is to protect the governmental body's interests in its planning and negotiations with regard to a particular transaction. For example, Open Records Decision No. 234 (1980) determined that plans, proposed locations, and cost estimates regarding a proposed city reservoir project could be withheld until the purchase of the reservoir site was complete. If specific information already has been provided to the party or parties engaged in negotiations with the governmental body, the purpose for the exception no longer applies and the information should be released. Your letter does not indicate whether the draft of the contract at issue has been provided to the Spring Creek Forest Preservation Society or if the society submitted the draft contract to the city. If the society prepared or has seen the draft, it must be released as public record: the purpose for withholding it would no longer apply. Section 3(a)(5) was intended to protect the government's purchasing interests, not the interests of sellers.

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 OR89-205.

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/bc

cc: Terry FitzPatrick  
Reporter  
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Ref.: ID# 6613