



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

July 18, 1989

Ms. Cathy Locke
City Attorney
City of College Station
P. O. Box 9960
College Station, Texas 77842-0960

Dear Ms. Locke:

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# 6835; this decision is OR89-216.

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 College Station received an open records request for copies of the city's insurance policies. You contend that in this instance section 3(a)(3) of the Open Records Act protects the policies from required public disclosure.

Section 3(a)(3) of the Open Records Act, known as the litigation exception, excepts from required public disclosure "information relating to litigation of a . . . civil nature and settlement negotiations, to which the state or a political subdivision is, or may be, a party . . ." You contend that section 3(a)(3) protects the insurance policies from required disclosure because the requestor has repeatedly asserted that he has several causes of action against the city.

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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, see Open Records Decision No. 323 (1982), and that disclosure of the materials would adversely affect the governmental body's litigation interests. Open Records Decision No. 493 (1988).

You have not shown that the requested material meets these tests. When a requestor has publicly stated on more than one occasion an intent to sue, without more, section 3(a)(3) is not applicable. Open Records Decision No. 331 (1982). Even if Mr. Rabe had in fact filed a lawsuit against the city, section 3(a)(3) does not protect information that is routinely treated as public and not directly related to the pending litigation. Open Records Decision No. 143 (1976).

Insurance policies held by cities are public information. See V.T.C.S. art. 6252-17a, § 6(3) (information in any contract dealing with the receipt or expenditure of public or other funds by governmental bodies is public); see also Open Records Decision No. 75 (1975) (university's group insurance contract is public). Consequently you may not withhold the policies pursuant to section 3(a)(3); this information 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 OR89-216.

Yours very truly,

Open Government Section
of the Opinion Committee 

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

JSR/RWP/mc

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Copies to: Dwight Rabe

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