



**THE ATTORNEY GENERAL  
OF TEXAS**

**JIM MATTOX  
ATTORNEY GENERAL**

July 26, 1989

Mr. Robert Mott  
Attorney  
Perdue, Brandon & Fielder  
2600 Citadil Plaza Drive, Suite 210  
Houston, Texas 77008

Dear Mr. Mott:

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# 6895; this decision is OR89-224.

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 Montgomery Central Appraisal District received a request for copies of or access to tax maps held by the district. You indicate that the company that prepared the maps claims copyright protection for the maps. You ask whether sections 3(a)(1) and/or 3(a)(4) protect the maps from required public disclosure.

A previous decision of this office governs your request. In Attorney General Opinion MW-307 (1981), this office indicated that federal copyright law supersedes the Open Records Act with regard to requests that a governmental body provide copies of documents subject to copyright protection. See also Open Records Decision No. 109 (1975). Opinion MW-307 stated:

Members of the public have the right to examine copyrighted materials held as public

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records and to make copies of such records unassisted by the state. Of course, one so doing assumes the risk of a copyright infringement suit.

See also Attorney General Opinion JM-757 (1987) (right of individuals to use their own copying equipment).

For these reasons, the Montgomery Central Appraisal District may refuse to make copies of its tax maps, but the district may not refuse public access to the original maps held by the district. The other exceptions you cite do not protect tax maps from public disclosure.

The requestor in this case raises the issue of the validity of the copyright protection claimed in this instance. The requestor cites Real Estate Data, Inc. v. the Sidwell Co., 809 F.2d 366 (7th Cir. 1987), apparently for the proposition that works that are commissioned by a governmental body and that are made public by statute cannot be subject to copyright protection. This office cannot, however, resolve disputed claims regarding the specific application of the copyright laws.

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 OR89-224.

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

Ref.: ID# 6895  
ID# 6954  
ID# 6962

cc: Charles W. Reger  
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