



**THE ATTORNEY GENERAL
OF TEXAS**

August 22, 1989

**JIM MATTOX
ATTORNEY GENERAL**

Mr. Tracy A. Pounders
Assistant City Attorney
City of Dallas
City Hall
Dallas, Texas 75201

Dear Mr. Pounders:

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# 7152; this decision is OR89-267.

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 Dallas received an open records request for information, including photographs, accumulated by a city consultant relating to a public works project. The requested information documents the condition of homes in areas where heavy road construction is expected to take place. You contend that sections 3(a)(1) and 3(a)(11) protect the requested information from required public disclosure.

Section 3(a)(1) of the act protects "information deemed confidential by law, either Constitutional, statutory, or by judicial decision," including the common-law right to privacy. Industrial Found. of the South v. Texas Indus. Accident Bd., 540 S.W.2d 668 (Tex. 1976), cert. denied, 430 U.S. 930 (1977). Common-law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and if it is of no legitimate concern to the public. Id. at 683-85. None of the information at issue meets these tests;

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consequently, you may not withhold the information pursuant to section 3(a)(1).

Section 3(a)(11) of the act excepts inter-agency and intra-agency memoranda and letters, but only to the extent that they contain sensitive advice, opinion, or recommendation intended for use in the entity's executive deliberative process. See Open Records Decision No. 464 (1987). The purpose of the exception is to encourage frank discussion on sensitive policy issues. Only the section of the consultant's report entitled "Conclusions" could conceivably come within the protection of section 3(a)(11). You have not shown, however, that the consultant's conclusions are the type of advice section 3(a)(11) was intended to protect. The information must be released as requested.

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 OR89-267.

Yours very truly,

Open Government Section
of the Opinion Committee

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

JSR/RWP/bc

Ref.: ID# 7152