



**THE ATTORNEY GENERAL  
OF TEXAS**

**JIM MATTOX  
ATTORNEY GENERAL**

October 18, 1989

Ms. Orlinda L. Naranjo  
Assistant City Attorney  
P. O. Box 1088  
Austin, Texas 78767-8828

Dear Ms. Naranjo:

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# 6579; this decision is OR89-337.

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 Austin received an open records request for numerous documents from an individual who filed suit against the city in United States District Court. You contend that the requested documents come under the protection of section 3(a)(7) of the act because the documents are currently subject to a protective order issued by the court.

One of the purposes for the section 3(a)(7) exception is to preserve the courts' ability to control the availability of information that is related to litigation over which the courts have jurisdiction. For example, in Open Records

Decision No. 309 (1982), the attorney general indicated that documents subject to a protective order may be excepted during the pendency of the lawsuit. See also Open Records Decision No. 143 (1976). After dismissal of the lawsuit, however, the protective order no longer affords protection from required public disclosure.

You may, therefore, withhold the requested documents pursuant to section 3(a)(7) only during the pendency of the court proceedings. If, after the conclusion of the lawsuit, the city receives another request for these records, it must seek another ruling from this office as to whether the records may be withheld.

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 OR89-337.

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/bc

cc: Mr. Robert D. Hejl

Ref.: ID# 6579  
ID# 6735  
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