THE ATTORNEY GENERAL
OF TEXAS

JIM MATTOX
ATTORNEY GENERAL

October 24, 1989

Mr. Bob E. Bradley
Executive Director
Texas State Board of Public Accountancy
1033 La Posada, Suite 340
Austin, Texas 78752-3892

Dear Mr. Bradley:

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# 7758; this decision is OR89-341.

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 Texas State Board of Public Accountancy received a request for a copy of the board's contract with an attorney to provide legal services for the board. You contend that the contract is protected by section 3(a)(2) of the Open Records Act, the "personnel file" exception.

Section 3(a)(2) protects from required disclosure:

> information in personnel files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy . . . and further provided that all information in personnel files of an individual employee within a governmental body is to be made available to that individual employee or his designated representative as is public information under this Act.

This section protects personnel file information only if its release would cause an invasion of privacy under the test articulated for section 3(a)(1) of the act. Hubert v. Harte-Hanks Texas Newspapers, Inc., 652 S.W.2d 546, 550 (Tex. App. - Austin 1983, writ ref'd n.r.e.). In Hubert v. Harte-Hanks Texas Newspapers, the court of appeals held that the common-law privacy test applied under section 3(a)(1) in Industrial Found. of the South v. Texas Indus. Accident Bd., 540 S.W.2d 668 (Tex. 1976), cert. denied, 430 U.S. 930 (1977), also applied under section 3(a)(2). Section 3(a)(2) applies to "employees." See Apodaca v. Montes, 606 S.W.2d 734, 735 (Tex. Civ. App. - El Paso 1980, no writ) (section 3(a)(2) does not apply to licenses). Because section 3(a)(1) applies to all individuals about whom governmental bodies hold information, it is not necessary to determine whether section 3(a)(2) applies to a contractor. The information at issue is not protected by privacy. First, it is not highly intimate or embarrassing. Second, there is a legitimate public interest in the amount of public funds paid to attorneys hired by governmental bodies.

Your request falls squarely within existing open records decisions. In Open Records Decision No. 499 (1988), this office held that the contract between a "private attorney and a governmental body, along with information showing the public funds paid to the attorney, are public. See also Open Records Decision No. 514 (1988). Open Records Decision No. 499 controls your request.

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 OR89-341.

Yours very truly,
Open Government Section
of the Opinion Committee

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

JSR/lcd

Ref.: ID# 7758
ID# 7802

Enclosure: ORD499

cc: Robert Ratcliffe
John Boston