



**THE ATTORNEY GENERAL
OF TEXAS**

October 31, 1989

**JIM MATTOX
ATTORNEY GENERAL**

Mr. J. Scott Chafin
University of Houston System
Office of University Counsel
4600 Gulf Freeway, Suite 425
Houston, Texas 77023

Dear Mr. Chafin:

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#s 5905 and 5774; this decision is OR89-356.

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 University of Houston System has received a request for information contained in numerous documents prepared or maintained by the university in connection with business transactions conducted by the university with two business entities. The requestor seeks access to or copies of all records held by the university in connection with these entities including purchase orders, vouchers, cancelled checks, contracts, business papers, supporting documentation, letters, memoranda, correspondence. He also asks for external and internal audits and investigations of the business dealings of the university system and its institutions with the two entities conducted by the university system, its board of regents and/or attorneys, the Texas Higher Education Coordinating Board, the Texas Attorney General's Office, or other authorities. All documents relating to payments made to an individual associated with one of the entities have also been requested, as well as all

documents relating to the university system's former Vice Chancellor for Administration and Finance. The final subject of the request includes all documents regarding internal or external investigations of vendors that do business with the university system and its institutions.

With the exception of the final item, you inform us that the university system has turned over all of the requested documents and information to the Harris County District Attorney's Office, which is conducting a criminal investigation into the business transactions that form the basis of the request. You claim this information is excepted from public disclosure by section 3(a)(3) of the Open Records Act. You have determined that the final subject of the request is open for disclosure except for those documents relating to the district attorney's investigation.

The district attorney's office confirms in separate letters that it is conducting an ongoing criminal investigation into these matters and that the individuals and entities named in the request are subjects of the investigation. The district attorney also states that evidence in this matter has been presented to a Harris County grand jury and will continue to be presented as the investigation progresses. The district attorney argues that this investigation will be hampered if the requested information is disclosed to the public.

To receive the protection of section 3(a)(3), a governmental body must show 1) that litigation is actually pending or reasonably anticipated and 2) that the information in question relates to the litigation such that withholding the information is necessary to preserve the governmental body's strategy or legal interests in the litigation. See Open Records Decision No. 478 (1987).

Information supplied to the district attorney by a governmental body that relates to criminal litigation is excepted by section 3(a)(3). Open Records Decision No. 469 (1987). In this instance, there is no indication that criminal litigation has commenced in this matter. However, a continuing grand jury investigation confirms that litigation is reasonably anticipated. Open Records Decision No. 395 (1983). The representative samples of the requested information you provided this office, themselves comprising evidence of the business transaction under investigation, clearly relate to the anticipated litigation. Consequently,

we conclude that the requested materials not already disclosed to the requested may be withheld pursuant to section 3(a)(3). This means that the university may withhold investigations of vendors that do business with the university; the university may not withhold purchase orders, vouchers, etc.¹

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 OR89-356.

Yours very truly,

*Open Government Section
of the Opinion Committee*

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of the Opinion Committee
Prepared by Steve Aragon
Assistant Attorney General

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Ref.: ID# 5774
ID# 5905

1. We note that you state that the university has already released purchase orders, vouchers, contracts, etc. This information cannot be withheld under section 3(a)(3). See generally Open Records Decision No. 511 (1988).