



THE ATTORNEY GENERAL
OF TEXAS

JIM MATTOX
ATTORNEY GENERAL

December 5, 1989

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# 7671; this decision is OR89-415.

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. Attorney General Opinion H-436 (1974). 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 a request for information regarding the city's investigation of allegations that Dixico, Inc., illegally discharged wastewater containing pollutants into the city's sanitary system. The city informs us that, after the city requested this decision, the city resolved the matter with Dixico. Your request letter claimed that sections 3(a)(3), 3(a)(7), 3(a)(8), and/or 3(a)(11) of the Open Records Act protect the information from required public disclosure. The information at issue consists of two drafts of agreed administrative orders that would have settled the city's claims against Dixico.

Documents at issue might have been protected from disclosure under sections 3(a)(3), 3(a)(7), and 3(a)(8) when the city was actively investigating Dixico. Now that the matter has been resolved, however, those exceptions no

Mr. Tracy Pounders
December 5, 1989
Page 2

longer apply. Moreover, once the orders were presented to Dixico for consideration, those exceptions would not apply. The purpose of sections 3(a)(3), 3(a)(7), and 3(a)(8) is to protect the city's interests, not those of Dixico. Consequently, the adverse publicity to which you refer is irrelevant. The public has a legitimate interest in information about the manner in which the city handles its responsibility to investigate polluters.

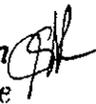
Your claim regarding section 3(a)(11) is also misplaced. The purpose of section 3(a)(11) is

to protect from public disclosure advice and opinions on policy matters and to encourage frank and open discussion within the agency in connection with its decision-making processes. (Emphasis added).

Austin v. City of San Antonio, 630 S.W.2d 391, 394 (Tex. App. - San Antonio 1982, writ ref'd n.r.e.); see Open Records Decision Nos. 464 (1987); 222 (1979). The exception protects the "executive" or high-level decision making process. The test under section 3(a)(11) is whether inter-agency or intra-agency information consists of advice, opinion, or recommendation that is used in the deliberative process. Open Records Decision No. 464 (1987). The information at issue here does not meet the tests applicable under section 3(a)(11).

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 OR89-415.

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/le

Ref.: ID# 7671

cc: Tina Taff
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