



**THE ATTORNEY GENERAL
OF TEXAS**

April 3, 1989

**JIM MATTOX
ATTORNEY GENERAL**

Mr. Edward H. Perry
Assistant City Attorney
City Hall
Dallas, Texas 75201

Dear Mr. Perry:

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# 5486; this decision is OR89-102.

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 Dallas Police Department received a request from a reporter for the Dallas Morning News newspaper for the maintenance records of a police squad car that was involved in a traffic accident resulting in two fatalities and serious injuries to other persons. The city has been served with notice of claim against it by a person who was injured in the accident. You contend that disclosure of the requested information is excepted by sections 3(a)(3), 3(a)(8), and 3(a)(11) of the Open Records Act.

In open records ruling number OR89-026, this office determined that section 3(a)(3) excepted from disclosure certain records relating to a city employee involved in an automobile accident while driving a city vehicle. Among the records that were excepted from disclosure were the work orders prepared for the vehicle involved in the accident. As in this instance, the city had been served with notice of a claim for injuries suffered in the accident. The letter ruling noted that section 101.101 of the Civil Practice and Remedies Code requires notice of a claim to be filed with a

Mr. Edward H. Perry
April 3, 1989
Page 2

city as a necessary prerequisite to a lawsuit for damages against the city. The city could therefore reasonably anticipate that a lawsuit would be filed concerning the accident. It was also determined that a premature release of the information would impair the city's litigation interests. Consequently, section 3(a)(3) excepted information concerning the employee and the vehicle from disclosure.

You contend that OR89-026 governs this request for information. We agree. You explain that the city is investigating this claim to determine the strengths and weaknesses of the city's position and whether an offer to settle the claim should be made. Although much of the requested information will be subject to discovery in any subsequent civil litigation, the premature release of the information would hinder the city's preparation and investigation of this claim. These considerations are sufficient to warrant the application of section 3(a)(3). Accordingly, in keeping with our decision in OR89-026, we conclude that the maintenance records of the vehicle in question may be withheld from disclosure at this time under section 3(a)(3). A copy of OR89-026 is attached to this letter. Since we have determined that section 3(a)(3) protects the requested information, it is unnecessary to consider the applicability of sections 3(a)(8) or 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 OR89-102.

Yours very truly,

Open Government Section
of the Opinion Committee

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Prepared by Steve Aragon
Assistant Attorney General

SA/bc

cc: Mr. Dan Shine
The Dallas Morning News
Communications Center
Dallas, Texas 75265

Enclosure: OR89-026

Ref.: ID#5486