



**THE ATTORNEY GENERAL  
OF TEXAS**

**JIM MATTOX  
ATTORNEY GENERAL**

April 7, 1989

Mr. Robert E. Shaddock  
General Counsel  
State Department of Highways  
and Public Transportation  
11th & Brazos  
Austin, Texas 78701-2483

Dear Mr. Shaddock:

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# 5494; this decision is OR89-104.

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 Department of Highways and Public Transportation received a request from Mr. William J. Kolb for an appraisal report on property currently subject to negotiations for acquisition by the department. You advise that the negotiations are on-going and that the potential exists for eminent domain proceedings in the event that negotiations are unsuccessful. You claim that the report is excepted from required disclosure by section 3(a)(5) of the Open Records Act.

Section 3(a)(5) protects ". . . information pertaining to appraisals or purchase price of real or personal property for public purposes prior to the formal award of contracts therefore." Your request is governed by Open Records Decision No. 234 (1980) (copy enclosed). You state that

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contracts have not been signed and that negotiations are still on-going. For this reason, you may withhold the information until the negotiations and contracts are completed. At that time, release of the information may be governed by other principles. See Open Records Decision No. 500 (1988).

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 OR89-104.

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/BLS/bc

cc: William J. Kolb  
Attorney at Law  
500 Texas Commerce Plaza  
Corpus Christi, Texas 78470

Enclosure: ORD-234

Ref.: ID# 5494