



**THE ATTORNEY GENERAL  
OF TEXAS**

**JIM MATTOX  
ATTORNEY GENERAL**

June 5, 1989

Mr. Robert E. Shaddock  
General Counsel  
State Department of Highways  
and Public Transportation  
Dewitt C. Greer State Highway Bldg.  
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# 6304; this decision is OR89-159.

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 State Department of Highways and Public Transportation received a demand letter from an attorney for several individuals complaining of an accident occurring February 28, 1989, at the interchange of Interstate Highway 610 East and U.S. Highway 59 North in Houston, Texas. You claim that section 3(a)(3) protects the information from required public disclosure.

To claim section 3(a)(3) the 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. Open Records Decision

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No. 478 (1987). See Open Records Decision No. 416 (1984); 180 (1977); 135 (1976). The demand letter you received shows that litigation is reasonably anticipated. Additionally, some of the information "relates" to the litigation within the meaning of section 3(a)(3). This information has been marked "withhold."

Other information that you submitted for review does not clearly "relate" to the anticipated litigation within the meaning of section 3(a)(3). For example, newspaper accounts of the accident cannot be withheld under the Open Records Act. The information that must be released is marked "release."

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 OR89-159.

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/bc

Ref.: ID# 6304