



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

June 6, 1989

Mr. Art Pertile, III
Assistant City Attorney
City of Waco
P. O. Box 2570
Waco, Texas 76702-2570

Dear Mr. Pertile:

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# 6267; this decision is OR89-169.

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 City of Waco received a request for information about the previous law enforcement experience of certain named officers and police recruits in the Waco Police Department. You claim that section 3(a)(3) of the Open Records Act protects this information from required 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 No. 478 (1987). See Open Records Decision No. 416 (1984); 180 (1977); 135 (1976).

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Although you may suspect that the requestor seeks the information at issue as part of an attempt to show discriminatory practices in transferring a particular officer, this basic kind of information does not "relate" to the cause of action at issue within the meaning of section 3(a)(3). See Open Records Decision No. 511 (1988). Moreover, you indicate that the prior experience of some of these same law enforcement officers was revealed during the course of depositions in the lawsuit at issue. Section 3(a)(3) does not apply once information has been released to the adverse party in litigation. Id.

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 OR89-169.

Yours very truly,
*Open Government Section
of the Opinion Committee* 

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of the Opinion Committee
Prepared by Jennifer S. Riggs
Chief, Open Government Section

JSR/bc

Ref.: ID# 6267