



**THE ATTORNEY GENERAL  
OF TEXAS**

**JIM MATTOX  
ATTORNEY GENERAL**

July 17, 1989

Ms. Cathy L. Meyer  
Assistant City Attorney  
P. O. Box 152288  
Irving, Texas 75015-2288

Dear Ms. Meyer:

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# 6093; this decision is OR89-212.

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 Irving received a request for the minutes of a meeting among members of the City of Irving's Building Inspection Department, a lien holder, and a property manager concerning possible violations of the city's building code in an apartment complex. You suggest that the minutes of this meeting are protected by section 3(a)(11) of the Open Records Act, or alternatively, by sections 3(a)(3) and 3(a)(8) of the act.

Section 3(a)(11) excepts from disclosure inter-agency or intra-agency information that consists of advice, opinion, or recommendation that has been used in the governmental body's deliberative process. Facts and written observations of facts and events cannot be withheld under section 3(a)(11). Open Records Decision No. 464 (1987). The minutes you have submitted consist of a transcription of the discussion among members of the city's Department of Building Inspection and concerned citizens. The minutes are

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written observations of the discussion at the meeting. You have not demonstrated how any of the information in the minutes actually played a role in the city's deliberative process. Consequently, the minutes may not be withheld under section 3(a)(11).

Section 3(a)(3), the litigation exception, authorizes governmental bodies to deny requests for information relating to pending or "reasonably anticipated" litigation involving them if the release of the information might adversely affect the litigation interests or strategy of the entity. Heard v. Houston Post Co., 684 S.W.2d 210 (Tex. App. - Houston [1st. Dist.] 1984, writ ref'd n.r.e.); Attorney General Opinion H-483 (1974); Open Records Decision No. 465 (1987). A governmental body can establish that litigation is "pending" by submitting a copy of the pleadings in a court case or by proving that a contested case is pending at the administrative agency level. The attorney general will find that litigation is "reasonably anticipated" only if a governmental body furnishes concrete evidence establishing that litigation involving a specific matter is realistically contemplated. See Open Records Decision No. 328 (1982). You have not presented evidence that indicates litigation concerning the conditions of the property discussed in the minutes is pending before a court or is "reasonably anticipated" by the City of Irving. The minutes therefore may not be withheld under section 3(a)(3).

Section 3(a)(8) applies to "records of law enforcement agencies." In our opinion, a section of city government whose function is essentially regulatory in nature is not a "law enforcement agency" for purposes of section 3(a)(8). The attorney general has previously held that section 3(a)(8) does not except the type of information at issue here. See Open Records Decision Nos. 85 (1975) (fire department log book is public); 80 (1975) (investigative report of the Real Estate Commission is public); 78 (1975) (sheriff's bail bond licensing records are public). We hold, therefore, that the minutes at issue are not protected from disclosure under section 3(a)(8). The minutes you have submitted must be released.

Your letter of April 5, 1989 raises questions concerning the Texas Open Meetings Act. Although this office holds authority to enforce the Texas Open Records Act, article 6252-17a, V.T.C.S., the Open Meetings Act does not grant us similar authority with regard to open meetings questions. The authority of this office to answer open meetings questions is governed by sections 402.042 and 402.043 of the Texas Government Code.

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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 OR89-212.

Yours very truly,

*Open Government Section  
of the Opinion Committee*   
Open Government Section  
of the Opinion Committee  
Approved by David A. Newton  
Assistant Attorney General

DAN/FAF/bc

Ref.: ID# 6093