



**THE ATTORNEY GENERAL  
OF TEXAS**

August 23, 1989

**JIM MATTOX  
ATTORNEY GENERAL**

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# 6560; this decision is OR89-273.

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 (the department) received two open records requests for appraisal reports on properties currently subject to negotiation for acquisition by the department. You state that possible eminent domain proceedings may result if the negotiations are unsuccessful. You contend that section 3(a)(5) of the Open Records Act protects the appraisal reports from required public disclosure.

Your request is governed by Open Records Decision No. 234 (1980). You may withhold the reports until the negotiations are completed and sales contracts are awarded, at which time the release of this information may be governed by other principles. See Open Records Decision No. 500 (1988).

Should the department receive similar open records requests in the future, you may consider this letter ruling

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as a "previous determination" for purposes of section 7 of the Open Records Act; you need not, therefore, request a decision from this office in order to withhold similar information in the future.

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 OR89-273.

Yours very truly,

*Open Government Section  
of the Opinion Committee*

Open Government Section  
of the Opinion Committee  
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DAN/RWP/bc

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