



**THE ATTORNEY GENERAL
OF TEXAS**

October 10, 1989

**JIM MATTOX
ATTORNEY GENERAL**

Mr. Robert E. Shaddock
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# 7645; this decision is OR89-331.

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 an open records request for copies of all statements taken during the investigation of an automobile accident involving one of the department's employees. You contend that all employee statements taken immediately after the accident occurred are protected from required public disclosure by section 3(a)(3) of the Open Records Act.

Section 3(a)(3) of the Open Records Act, known as the litigation exception, excepts from required public disclosure information relating to litigation. You contend that section 3(a)(3) excepts the statements from required disclosure because the request letter, which comes from an attorney who represents an individual injured in the accident, contains language which suggests that the requestor's client

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suffered her injuries because of the negligent acts of the department and its employee.

To secure the protection of section 3(a)(3), a governmental body must demonstrate that a judicial or quasi-judicial proceeding is pending or reasonably anticipated, Open Records Decision No. 452 (1986), and that the requested material relates to the litigation such that disclosure of the materials would adversely affect the governmental body's litigation interests. Open Records Decision No. 493 (1988). In light of the request letter's language and tone, this office believes that it is not unreasonable to conclude that litigation is reasonably anticipated. Further, because the employees' statements pertain solely to the events leading up to, during, and after the accident, you may withhold the statements in their entirety. This ruling does not address, however, whether other information submitted to this office comes under the protection of section 3(a)(3), as we do not believe these other records come within the ambit of the open records request.

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 OR89-311.

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/RWP/bc

cc: Mr. Mike Lipscomb
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620 Dallas Drive
Denton, Texas 76205

Ref.: ID# 7645