



THE ATTORNEY GENERAL
OF TEXAS

April 17, 1989

JIM MATTOX
ATTORNEY GENERAL

Ms. Mitzi I. Cotton
Assistant City Attorney
City of Austin
P.O. Box 1088
Austin, Texas 78767-8828

Dear Ms. Cotton:

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# 5806; this decision is OR89-126.

Under the Open Records Act, all the information held by governmental bodies is open unless the information falls within one of the act's specific exceptions to 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 Austin received two requests for the workpapers and recommendations made by the Resource Management Department to the City Manager to assist in producing Austin's five year financial forecast. The five year forecast for the City of Austin is available for public review. You assert that portions of the memorandum (Exhibit "B") submitted to the City Manager are confidential advice, opinion, or recommendation and should be excepted from disclosure under section 3(a)(11) of the Open Records Act.

Section 3(a)(11) protects advice, opinion and recommendation on policy matters in order to encourage frank discussion in connection with a governmental entity's decision-making process. See Austin v. City of San Antonio, 630 S.W.2d 391, 394 (Tex. App. - San Antonio 1982, writ ref'd n.r.e.). Factual information, however, when severable from advice, opinion, and recommendation must be disclosed. See Environmental Protection Agency v. Mink, 410 U.S. 73 (1973); Attorney General Opinion H-436 (1974); Open Records Decision No. 419 (1984). Whether specific information falls within section 3(a)(11) depends on the circumstances surrounding the creation or collection of the information. See Open

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Records Decision No. 464 (1987). For example, in Open Records Decision No. 429 (1985), this office indicated that information protected by section 3(a)(11) must be prepared by a person or entity with an official reason or duty to provide the information in question. See also Open Records Decision Nos. 273, 283 (1981).

You wish to withhold portions of the Resource Management Department's recommendations (and discussions of these recommendations). You may not withhold the highlighted portions of the Resource Management Department's memorandum pursuant to section 3(a)(11). Although the economic forecasts contained in the reports might constitute "recommendations," they do not constitute the kind of subjective, sensitive opinions section 3(a)(11) was designed to protect. The purpose of the Open Records Act was to open governmental bodies' operations to public scrutiny.

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 OR88-126.

Yours very truly,

*Open Government Section
of the Opinion Committee* 

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

JSR/MAK/bc

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Ref.: ID# 5806