



**THE ATTORNEY GENERAL  
OF TEXAS**

**JIM MATTOX  
ATTORNEY GENERAL**

June 5, 1989

Mr. David M. Douglas  
General Counsel  
Texas Department of Public Safety  
5805 North Lamar Blvd.  
P. O. Box 4087  
Austin, Texas 78773-0001

Dear Mr. Douglas:

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# 6303; this decision is OR89-160.

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 Texas Department of Public Safety received a request from a law firm for a number of records relating to an accident in which Terry Worley died. The Department wishes to withhold the conclusions of a highway patrol trooper who investigated the fatal accident. You claim that section 3(a)(11) of the Open Records Act protects the officer's opinions from required public disclosure.

Section 3(a)(11) protects advice and opinion on policy matters in order to encourage open and frank discussion between subordinates and supervisors in the deliberative process. Open Records Decision No. 464 (1987). The purpose of section 3(a)(11) is

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to protect from public disclosure advice and opinions on policy matters and to encourage frank and open discussion within the agency in connection with its decision-making processes.

Austin v. City of San Antonio, 630 S.W.2d 391, 394 (Tex. App. - San Antonio 1982, writ ref'd n.r.e.); see Open Records Decision No. 464 (1987); 222 (1979). The test under section 3(a)(11) is whether inter-agency or intra-agency information consists of advice, opinion, or recommendation that is used in the deliberative process. Open Records Decision No. 464.

This office has reviewed the information you submitted for review and has determined that you may withhold the paragraph titled "conclusion" on the third page of the memorandum from Trooper Frank Garza to Captain E. C. Sherman. Section 3(a)(11) applies.

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 OR89-160.

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# 6303