



**THE ATTORNEY GENERAL
OF TEXAS**

September 25, 1989

**JIM MATTOX
ATTORNEY GENERAL**

Mr. Hugh W. Davis, Jr.
Assistant City Attorney
The City of Fort Worth
1000 Throckmorton
Fort Worth, Texas 76102

Dear Mr. Davis:

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# 7288; this decision is OR89-315.

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 Fort Worth received a request for a great deal of information about Mr. B. Don Magness, the Director of Public Events for the City of Fort Worth. The city wishes to withhold one memorandum from disclosure. Because the city seeks to withhold only this document, we assume that the remaining information has been released.

You claim that section 3(a)(11) protects the memorandum, directed from Mr. Magness to Ms. Ruth Ann McKinney, Assistant City Manager, from required public disclosure. Section 3(a)(11) protects advice and opinion on policy matters during a governmental body's policy-making or "deliberative" process. Open Records Decision No. 464 (1987). The purpose of section 3(a)(11) is

to protect from public disclosure advice and opinions on policy matters and to encourage frank and open discussion within the agency

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in connection with its decision-making processes. (Emphasis added.)

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 Nos. 464; 222 (1979). The exception protects the "executive" or high-level decision-making process. See Attorney General Opinion H-436 (1974).

The memorandum at issue is a critique of a proposed contract between the City of Fort Worth and the Fort Worth Convention and Visitors Bureau. The content of the memorandum is clearly the kind of information protected by section 3(a)(11), despite the fact that Mr. Magness' opinion was not solicited. It is within the realm of his official responsibilities to comment on such a contract. Consequently, the city has the discretion to withhold the memorandum.¹

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 OR89-315.

Yours very truly,

*Open Government Section
of the Opinion Committee* 

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

JSR/bc

cc: Mr. Thomas Korosec
Fort Worth Star-Telegram
P. O. Box 1870
Fort Worth, Texas 76101

Ref.: ID# 7288

1. This does not mean, however, that the proposed contract may be withheld from public disclosure.