



THE ATTORNEY GENERAL  
OF TEXAS

JINI MATTOX  
ATTORNEY GENERAL

October 10, 1990

Ms. Sylvia Borunda Firth  
Assistant City Attorney  
City of El Paso  
2 Civic Center Plaza  
El Paso, Texas 79999

OR90-476

Dear Ms. Firth:

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# 10332.

The City of El Paso received an open records request for "a copy of the City Planning Department file on the matter of the CDI Site Plan review of its location in Miramonte Industrial Park." You state that you have made available to the requestor most of the file; you seek to withhold, however, certain inter-departmental memoranda that you contend come under the protection of section 3(a)(11).

Section 3(a)(11) of the act excepts inter-agency and intra-agency memoranda and letters, but only to the extent that they contain advice, opinion, or recommendation intended for use in the deliberative process. Open Records Decision No. 464 (1987). 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. This helps assure that the information plays a role in the deliberative process; if it does not, it is not entitled to protection under section 3(a)(11). See also Open Records Decision No. 464.

Section 3(a)(11) does not protect facts and written observation of facts and events that are severable from advice, opinions, and recommendation. Open Records Decision No. 450 (1986). If, however, the factual information is so inextricably intertwined with material involving advice, opinion, or recommendation as to make separation of the factual data impractical, that information may be withheld. Open Records Decision No. 313 (1982). We have marked those

portions of the inter-office memoranda that you may withhold pursuant to section 3(a)(11).

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 OR90-476.

Yours very truly,



Jim Moellinger  
Assistant Attorney General  
Opinion Committee

JM/RWP/le

Ref.: ID# 10332

Enclosures: Marked documents

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