



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

April 11, 1991

Mr. Charles E. Griffith  
Deputy City Attorney  
City of Austin  
P. O. Box 1088  
Austin, Texas 78767-8828

OR91-174

Dear Mr. Griffith:

This is to acknowledge your request for reconsideration of Open Records Letter OR91-111 (1991). Your most recent correspondence to this office has been assigned ID# 11870.

In OR91-111, this office held that the City of Austin waived the protection of section 3(a)(11) and the attorney client privilege aspect of section 3(a)(7) with regard to certain interoffice memoranda because the city had failed to request an open records decision from this office within ten days of receipt of the open records request; consequently, there is a legal presumption that requested information is public. See V.T.C.S. art. 6252-17a, § 7(a). Further, this office stated that unless you provided this office, within 10 days of receipt of OR91-111, compelling reasons as to why the information not held to be protected by section 3(a)(1) of the Open Records Act should be withheld pursuant to sections 3(a)(7) or 3(a)(11), the remaining information must be released. You state that the city received OR91-111 on March 1, 1991; this office received your response on March 12, 1991.

Your first argument for keeping the content of the memoranda confidential, despite the legal presumption of openness, is that the author of two of the memoranda "believed and expected the items would remain confidential information and confidential requests for advice and assistance from the attorney." It is well established, however, that information is not confidential under the Open Records Act simply because the party submitting the information anticipates or requests that it be kept confidential. Industrial Found. of the South v. Texas Indus. Accident Bd. 540 S.W.2d 668, 677 (Tex. 1976), *cert. denied* 430 U.S. 931 (1977). To be protected from public disclosure the requested information must fall within one of the act's exceptions. The city waived the applicable exceptions to public disclosure, except for section 3(a)(1), when it failed to seek an open records decision in a timely manner. See Hancock v. State Bd. of Ins. 797 S.W.2d 379 (Tex. App. -- Austin 1990, no writ).

You state that "[t]he ongoing relationship between the author of the memos and the individuals and entities discussed in the memos would be adversely affected by the release

of this clearly embarrassing information." Information is not excepted from disclosure merely because its release might embarrass individuals or governments. Open Records Decision Nos. 316 (1982); 294 (1981). The Open Records Act does not authorize governmental bodies to withhold information from the public except as expressly provided. See V.T.C.S. art. 6252-17a, §14(b); Open Records Decision No. 419 (1984) and authorities cited therein. This office marked the information contained in the requested materials that meets the test for common-law privacy, *i.e.* that which is "highly intimate or embarrassing and of no legitimate concern to the public." The remaining information in the memoranda does not meet this test.

Finally, you contend that "the spirit and the letter of the Open Records Act are best served by allowing this information to be withheld to encourage frank and open discussion within city departments, and between an attorney and a client." We disagree. This is an argument under 3(a)(11), one of the exceptions specifically waivable by a governmental body. V.T.C.S. art. 6252-17a, § 14(a). In placing a time limit on the production of public information, the legislature recognized the value of *timely* production of public records. See Open Records Decision No. 515 (1988) at 6. The "spirit " and "letter" of the act are in fact best served by governmental entities complying with the provisions of the act in a timely manner. A waivable exception cannot overcome a failure to comply with the time limits of the Act.

You have not provided this office with compelling reasons for withholding the requested information. We therefore decline to reconsider our ruling in OR91-111.

Yours very truly,



Rick Gilpin  
Assistant Attorney General  
Opinion Committee

RG/RWP/lcd

Ref: ID# 11870  
OR91-111

cc: R. Luther Carpenter  
all systems go!  
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