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ATTORNEY GENERAL

Office of the Attorney General
State of Texas

May 30, 1991

Ms. Susan M. Kelley
General Counsel
Texas Workers' Compensation Commission
4000 South IH-35
Austin, Texas 78704

OR91-253

Dear Ms. Kelley:

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# 12372.

We have considered the exception you claimed, specifically, section 3(a)(11) and have reviewed the documents at issue. The documents consist of applicant prescreen ranking worksheets, applicant job selection/approval forms, certain interview notes and a resume with notations made by an agency employee.

Section 3(a)(11) protects "inter-agency or intra-agency memorandums or letters which not be available by law to a party in litigation with the agency." Section 3(a)(11) was designed to protect advice and opinion on agency matters in order to encourage open and frank discussion in the deliberative process of governmental bodies. Section 3(a)(11), however, only excepts from disclosure advice, opinion, and recommendation and not facts or written observations of fact. *See* Open Records Decision Nos. 538 (1990), 470 (1987).

You may withhold from disclosure pursuant to section 3(a)(11) on the applicant selection/approval form only the information contained in the "comments" portion of the form since it consists of the interviewer's evaluation of the candidates. The remaining information on the form consists of the names of the final candidates for a position, a summary of their education and experience, factual information about the position, and the name of the interviewer. The names and backgrounds of candidates are not excepted from disclosure. Open Records Decision No. 439 (1986). As stated above, facts are not excepted from disclosure pursuant to section 3(a)(11), and thus, the factual information about the position and the name of the interviewer must be disclosed.

With regard to the prescreen ranking worksheet, only the actual rankings of the applicants may be withheld from disclosure pursuant to section 3(a)(11). Open Records Decision No. 249 (1980). The remaining information on the form consists of the names of the applicants ranked, factual data about the position and its posting, the identity of the employee conducting the screening, and the criteria employed in the screening and the weight given to each factor. None of this information is advice, opinion, or recommendation used in internal agency deliberations.

We now turn to the notations that you have marked on the resume that you have submitted to us for our review. Since the marked notations consists of intra-agency advice or opinion, you may withhold those notations pursuant to section 3(a)(11).

You also argue that section 3(a)(11) excepts from disclosure the interview notes. However, you have not marked the portions that constitute intra-agency advice, opinion, and recommendations. Our review revealed that significant portions of the notes consist of facts which are not excepted under section 3(a)(11). A general claim that an exception applies to an entire file or document, when the exception clearly is not applicable to all the information contained therein, does not satisfy the burden your agency has to explain in detail how an exception applies. Thus, all of the interview notes must be disclosed. See Open Records Decision No. 363 (1983).

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 OR91-253.

Yours very truly,



Celeste A. Baker
Assistant Attorney General
Opinion Committee

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Enclosure: documents; Open Records Decision No. 538, 470, 439, 363, 249

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