



Office of the Attorney General
State of Texas

March 27, 1992

DAN MORALES
ATTORNEY GENERAL

Honorable Lena Guerrero
Chair, Texas Railroad Commission
P. O. Box 12967
Austin, Texas 78711-2967

OR92-118

Dear Commissioner Guerrero:

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# 15274.

You have received a request for information relating to Texas Railroad Commission (the "commission") meetings. Specifically, the requestor seeks:

1. Documents in the notebook used by the Railroad Commissioners and Railroad Commission staff at the Commissioners' meeting held on February 24, 1992 in Austin, which were related to the "Oil and Gas" items on the afternoon agenda.
2. "Oil and Gas" agenda item documents prepared and compiled for the Commissioners' notebook for all future Commission meetings.

We note, in reference to the second item, that a governmental body need not comply with a standing request to provide information "on a periodic basis." Open Records Decision No. 465 (1987) at 1. Nor must a governmental body treat a request as embracing information prepared after the request was made, or inform the requestor subsequently when the information does come into existence. Open Records Decision No. 452 (1986) at 3. Accordingly, under the Open Records Act you are not obligated to respond to the second request.

With respect to the first item, you have submitted for our review four exhibits. You advise us that Exhibit 4 and other information not submitted to us have been released to the requestor. You assert that Exhibits 1 through 3 are excepted from required public disclosure by section 3(a)(11) of the Open Records Act as information constituting advice, opinion and recommendation. You also contend that Exhibit 2 is excepted by section 3(a)(11) as information constituting a draft.

Section 3(a)(11) excepts from public disclosure "inter-agency or intra-agency memorandums or letters which would not be available by law to a party in litigation with the agency." It is well established that the purpose of section 3(a)(11) is to protect from public disclosure advice, opinion, and recommendation used in the decisional process within an agency or between agencies. This protection is intended to encourage open and frank discussion in the deliberative process. See, e.g., *Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.--San Antonio 1982, writ ref'd n.r.e.); Attorney General Opinion H-436 (1974); Open Records Decision Nos. 538 (1990); 470 (1987). Purely factual information, however, does not constitute advice, opinion, or recommendation and may not be withheld under section 3(a)(11). Open Records Decision No. 450 (1986). "[W]here a [record] is genuinely a preliminary draft of a document that has been released or is intended for release in a final form, the draft necessarily represents the advice, opinion, and recommendation of the drafter as to the form and content of the final document." Open Records Decision No. 559 (1990) at 2.

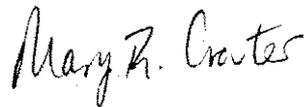
We have examined the documents submitted to us for review. Exhibit 1 contains some factual information; however, this information is inextricably intertwined with information excepted from required public disclosure under section 3(a)(11). Accordingly, the entire document may be withheld from required public disclosure under section 3(a)(11). Exhibit 3 includes some information that constitutes advice, opinion, and recommendation and is thus excepted from required public disclosure by section 3(a)(11). For your convenience, we have marked the information that may be withheld. The remaining portion of Exhibit 3, however, contains no advice, opinion, or recommendation, and must therefore be released.

As regards Exhibit 2, you advised us by telephone that the commission is currently drafting rules for oil spill cleanup procedures and standards and that the draft "Interim Guidelines For Remediation of Soil Contaminated with Crude Oil from a Spill Incident" (Exhibit 2) has neither been reviewed nor adopted by the commission. Because Exhibit 2 represents the advice, opinion, and

recommendations of the staff to the commission, we conclude that it may be withheld from required public disclosure under section 3(a)(11) at this time.

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 OR92-118.

Yours very truly,



Mary R. Crouter
Assistant Attorney General
Opinion Committee

MRC/GK/nhb

Ref.: ID# 15274

Enclosure: Marked documents

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