



## Office of the Attorney General

State of Texas

November 23, 1992

DAN MORALES  
ATTORNEY GENERAL

Ms. Helen M. Gros  
Assistant City Attorney  
City of Houston  
P. O. Box 1562  
Houston, Texas 77251-1562

OR92-670

Dear Ms. Gros:

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# 17606.

The City of Houston (the "city") has received a request for information related to the issuance of certain emergency wrecker permits. Specifically, the requestor seeks "the Report made by Regulatory Affairs Division regarding the application, hearing process and determination of number and who they determine to receive an Emergency Permit." In addition, the requestor seeks the names of individuals who participated in a certain application and hearing process. You advise us that some of the requested information has been made available to the requestor. You have submitted to us for review, however, a document titled "Examiner Report 1991 Emergency Wrecker Permits, which you claim is excepted from required public disclosure by section 3(a)(11) of the Open Records Act.

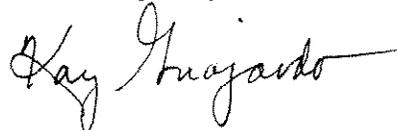
Section 3(a)(11) excepts "inter-agency or intra-agency memorandums or letters which would not be available by law to a party in litigation with the agency." It is well established that the purpose of section 3(a)(11) is to protect from public disclosure advice, opinion, and recommendation used in the 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) at 2; 470 (1987) at 6. Where 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) (copy enclosed). Purely factual information in a preliminary draft, however, where severable from information that constitutes "advice, opinion, or recommendation," may not be withheld under section 3(a)(11). *Id.* at 2; *see also* Open Records Decision No. 450 (1986).

Under the Open Records Act, all information held by governmental bodies is open to the public unless it is within a specific exception to disclosure. The custodian of records has the burden of proving that records are excepted from public disclosure. Attorney General Opinion H-436. If a governmental body fails to show how an exception applies to the records, it will ordinarily waive the exception unless the information is deemed confidential by the act. *See* Attorney General Opinion JM-672 (1987). We are returning the documents to you. Please resubmit them with markings that indicate which information constitutes "advice, opinion, or recommendation" used in the deliberative process. You have seven days from the date of this letter to resubmit the marked documents to us. Otherwise, the requested information must be released. If you wish to waive the protection of section 3(a)(11) as to some or all of the material, the Open Records Act permits you to do so.

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 OR92-670.

Yours very truly,



Kay H. Guajardo  
Assistant Attorney General  
Opinion Committee

KHG/GCK/lmm

Enclosures: Open Records Decision No. 559

Ref.: ID# 17606

cc: Ms. Barbara Henderson  
Mr. Edward Small  
Mr. Carl Jackson  
Co-Chairs  
Coalition of Houston Towing Associations  
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