



Office of the Attorney General  
State of Texas

March 8, 1993

DAN MORALES  
ATTORNEY GENERAL

Mr. James O. Faires  
Attorney  
Faires & Garrett  
1109 Main Street  
Commerce, Texas 75428-2682

OR93-088

Dear Mr. Faires:

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# 18442.

The City of Commerce (the city) received an open records request regarding applicants for the position of city manager. The requestor specifically seeks, *inter alia*,

The list of the nine finalists compiled by the Citizens' Advisory Committee and submitted to the City Commission [and]

The list of the four finalists selected by the city commission and the ratings awarded by the commissioners to each of the above mentioned nine finalists.

You contend that the ratings of the nine finalists come under the protection of section 3(a)(11) of the Open Records Act.<sup>1</sup> This office need not, however, determine the applicability of section 3(a)(11) in this instance. In correspondence dated January 20, 1993, to your office, this office specifically asked that you submit to us copies of the requested information with the caveat that your failure to do so would result in the city's waiver of the act's discretionary exceptions. *See* Open Records Decision No. 197 (1978) (refusal to submit copies of requested information results in presumption that the information is public). Section 3(a)(11) is a discretionary exception that may be waived. *See, e.g.,* Open Records Decision No. 473 (1987) at 2. Because you have not submitted copies of the requested information, the information is public and must be released.<sup>2</sup>

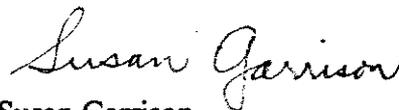
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<sup>1</sup>In your initial correspondence to this office, you originally asserted the protection of sections 3(a)(1) and 3(a)(9). We interpret your subsequent argument as superseding your first.

<sup>2</sup>Even if this office were to interpret your request as one invoking the protection of sections 3(a)(1) and 3(a)(9), which are mandatory exceptions that protect information deemed confidential by law,

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 OR93-088.

Yours very truly,



Susan Garrison  
Assistant Attorney General  
Opinion Committee

SG/RWP/lmm

Ref: ID# 18442  
ID# 18520  
ID# 18666

cc: Ms. Iris Robinson  
Commerce News  
1108 Park Street  
Commerce, Texas 75428-2682

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we would have no basis for determining the applicability of these exceptions in light of your failure to submit copies of the requested information.