



# The Attorney General of Texas

October 17, 1980

**MARK WHITE**  
Attorney General

Supreme Court Building  
P.O. Box 12548  
Austin, TX. 78711  
512/475-2501

701 Commerce, Suite 200  
Dallas, TX. 75202  
214/742-8844

4824 Alberta Ave., Suite 180  
El Paso, TX. 79905  
915/533-3484

1220 Dallas Ave., Suite 202  
Houston, TX. 77002  
713/650-0666

806 Broadway, Suite 312  
Lubbock, TX. 79401  
806/747-5238

4308 N. Tenth, Suite B  
McAllen, TX. 78501  
512/682-4547

200 Main Plaza, Suite 400  
San Antonio, TX. 78205  
512/225-4181

An Equal Opportunity/  
Affirmative Action Employer

**Mr. Lee Holt, City Attorney**  
City Hall  
Dallas, Texas 75201

**Open Records Decision No. 256**

**Re: Whether information held by a  
city concerning job market survey is  
public under the Open Records Act**

**Dear Mr. Holt:**

You have requested our opinion as to whether information regarding a job market survey is available to the public under the Open Records Act, article 6252-17a, V.T.C.S. In mid-1979, the Urban Planning Department of the City of Dallas undertook a job market survey for the purpose of determining whether salaries paid by the city to photographers and darkroom technicians were comparable to those in private industry. A set of longhand notes reflect wage rate information obtained from the specific employers who were contacted. An inter-office memorandum summarizes the results of the survey, draws conclusions, and makes recommendations.

With regard to the longhand notes, we believe the information obtained from specific private employers is excepted from disclosure by section 3(a)(10) of the Open Records Act as:

trade secrets and commercial or financial information obtained from a person and privileged or confidential by statute or by judicial decision.

The leading federal case, National Parks & Conservation Association v. Morton, 498 F. 2d 765 (D.C. Cir. 1974), established the following standard for determining the confidentiality of financial information:

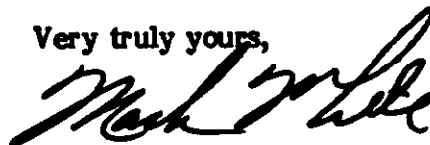
[C]ommercial or financial matter is 'confidential' for purposes of the exemption if disclosure of the information is likely to have either of the following effects: (1) to impair the Government's ability to obtain necessary information in the future; or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained.

498 F. 2d at 770. You indicate that no city ordinance requires a private employer to cooperate with city officials in a job market survey, that each

employer was assured that the confidentiality of his answers would be maintained, and that "it is very unlikely that the city will be able to conduct complete job market surveys in the future if companies know that salary data could be publicly released." In our opinion, since release of information reflecting wage rates paid by individual employers is likely to "impair the Government's ability to obtain necessary information in the future," the longhand notes reflecting this information are excepted from disclosure by section 3(a)(10). See Open Records Decision No. 173 (1977).

On the other hand, the factual information contained in the memorandum does not identify individual companies, but merely the "average low range" and "average high range" of various positions in the private sector. Unlike the situation in Open Records Decision No. 179 (1977), the city is not presently engaged in collective bargaining negotiations with its photographic employees, and thus, release of this purely factual data would not "disclose the internal deliberative process of the city." The latter part of the memorandum does, however, draw conclusions and make recommendations regarding the wages paid to city photographers. That portion is excepted from disclosure by section 3(a)(11) of the Open Records Act, since it clearly constitutes "advice and opinion on policy matters." We hold therefore that the factual information contained in the memorandum at issue should be extracted and made available to the requestor. The remainder of the memorandum is excepted from disclosure under section 3(a)(11). We have marked that portion which may be withheld.

Very truly yours,



MARK WHITE  
Attorney General of Texas

JOHN W. FAINTER, JR.  
First Assistant Attorney General

RICHARD E. GRAY III  
Executive Assistant Attorney General

Prepared by Rick Gilpin  
Assistant Attorney General

APPROVED:  
OPINION COMMITTEE

Susan Garrison, Acting Chairman  
Jon Bible  
Rick Gilpin