



## **THE ATTORNEY GENERAL OF TEXAS**

**JIM MATTOX  
ATTORNEY GENERAL**

Mr. Anthony C. McGettrick  
Laredo City Attorney  
1105 Lincoln  
Laredo, Texas 78040

Open Records Decision No. 460

Re: Whether the city manager must release a proposed budget under the Open Records Act before the date the budget is presented to the city council

Dear Mr. McGettrick:

The city of Laredo received a request under the Texas Open Records Act, article 6252-17a, V.T.C.S., for a copy of the city manager's proposed budget for the sewer fund. You indicate that the city charter directs the city manager to present written budget proposals to the city council. The council discusses the budget during at least one public hearing prior to its adoption. The city manager releases copies of the budget to the public when he presents the budget to the council for public discussion. You ask whether the city manager must release either the partially completed or finalized proposed budget before the date the budget is presented to the city council.

Under the Open Records Act, all information collected, assembled, or maintained by governmental bodies covered by the act is open unless the information falls within one of the act's specific exceptions to disclosure. You contend that sections 3(a)(6) and 3(a)(11) of article 6252-17a except the proposed budget from public disclosure.

Section 3(a)(6) excepts from disclosure "drafts and working papers involved in the preparation of proposed legislation." This office has decided only a handful of cases under section 3(a)(6). See Open Records Decision Nos. 429 (1985); 367 (1983); 344 (1982); 248 (1980); 197 (1978); 140 (1976). Section 3(a)(6) ordinarily applies only to persons with a responsibility to prepare information and proposals for a legislative body. Open Records Decision No. 429. You indicate that the city charter directs the city manager to prepare budget proposals for the city council. Because of this directive and because the city council is a legislative body, section 3(a)(6) applies to this situation. The applicability of section 3(a)(6) to this specific budget proposal, however, depends upon the nature of the proposal.

In Open Records Decision No. 248, this office held that section 3(a)(6) protects drafts of a municipal ordinance or resolution which

reflect policy judgments, recommendations, and proposals. The purpose for the exception is to encourage frank discussion on policy matters between the subordinates or advisors of a legislative body and the legislative body. Accordingly, section 3(a)(6) does not except purely factual information. Open Records Decision Nos. 344, 140. For example, in Open Records Decision No. 344, this office required the State Property Tax Board to release factual findings of the value of taxable property. On the other hand, a comparison or analysis of facts prepared to support proposed legislation is within the ambit of section 3(a)(6). See Open Records Decision No. 140.

Applying these principles to the case at hand requires the conclusion that section 3(a)(6) protects a proposed budget. This situation is not like that presented in Open Records Decision No. 344. In that decision, the property value findings of the State Property Tax Board were determined to be factual in nature. Further, the decision is distinguishable on the basis that the board's findings were not submitted to the various school districts as "proposed legislation"; the board's findings were of an independent adjudicative nature. Consequently, the property value findings failed to fit the classic example of proposed legislation that section 3(a)(6) was intended to protect. See generally Open Records Decision No. 429. In contrast, the city manager's proposed budget for a city project such as a Sewer Fund constitutes "proposed legislation" which, by its very nature, comprises recommendation rather than fact. If, however, the proposal incidentally contains purely factual matters which can be severed and disclosed without revealing the recommendations of the city manager, these factual matters must be disclosed. For example, if the proposed budget contains expenditures for the previous year, the city cannot refuse to disclose the expenditures simply because they are included in the proposed budget.

It has been suggested that subsections (1) and (5) of section 6 of the Open Records Act require the disclosure of the budget proposal as soon as the manager completes it. These subsections require the disclosure of certain reports "upon completion":

Sec. 6. Without limiting the meaning of other sections of this Act, the following categories of information are specifically made public information:

(1) reports, audits, evaluations, and investigations made of, for, or by governmental bodies upon completion;

. . . . .

(5) all working papers, research material, and information used to make estimates of the need for, or expenditure of, public funds or taxes by

any governmental body, upon completion of such estimates. . . . (Emphasis added).

V.T.C.S. art. 6252-17a, §6.

It is now well-established that section 6 does not limit the meaning of other sections of the Open Records Act. See Houston Chronicle Publishing Co. v. City of Houston, 531 S.W.2d 177 (Tex. Civ. App. - Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976); Open Records Decision Nos. 407 (1984); 344, 321 (1982); 140 (1976). This means that information may not be withheld solely because it is in incomplete form. The applicable test for required disclosure under the Open Records Act is two-fold: (1) whether the information constitutes information collected, assembled, or maintained by governmental bodies within the scope of section 3(a); and, if so, (2) whether the information falls within one of the 18 specific exceptions to disclosure listed in section 3(a). Section 6 does not negate the specific exceptions to disclosure. As indicated, a proposed budget submitted by the city manager to the city council falls within section 3(a)(6). Further, although the budget may be "completed" with regard to the city manager's role, it remains merely a draft of legislation until the city council adopts it.

You also suggest that section 3(a)(11) protects the proposed budget from disclosure. Section 3(a)(11) protects

inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than one in litigation with the agency.

Like section 3(a)(6), section 3(a)(11) protects advice, opinion and recommendation on policy matters in order to encourage frank discussion in connection with a governmental entity's decision-making process. See Austin v. City of San Antonio, 630 S.W.2d 391, 394 (Tex. App. - San Antonio 1982, writ ref'd n.r.e.). In Open Records Decision No. 429, this office examined decisions interpreting section 3(a)(11) in determining the scope of section 3(a)(6). Although the provisions protect the same type of information, section 3(a)(6) is narrower in that it applies specifically to the legislative process. See Open Records Decision No. 429. In light of our response regarding section 3(a)(6), it is unnecessary to address your claim that section 3(a)(11) protects the proposed budget.

Very truly yours,



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