



THE ATTORNEY GENERAL
OF TEXAS

AUSTIN, TEXAS 78711

JOHN L. ELLIOTT,
ATTORNEY GENERAL

December 28, 1976

The Honorable Kenneth H. Ashworth Open Records Decision No. 149
Coordinating Board
Texas College & University System Re: Whether a Coordinating Board staff report
P. O. Box 12788, Capitol Station which was never presented
Austin, Texas 78711 to the Board is public
under the Open Records Act.

Dear Dr. Ashworth:

You have requested our decision under the Open Records Act, article 6252-17a, V.T.C.S., as to whether a staff report of the Coordinating Board, Texas College and University System, is subject to disclosure. You state that, pursuant to a proposal to establish a new medical school submitted to the Board by Texas Woman's University, the Coordinating Board staff prepared a report and recommendation which has neither been presented to the Board, nor made available to any Board members or to any representative of Texas Woman's University. A journalist has requested that the report be released.

You contend that the staff report is excepted from disclosure under section 3(a)(11) of the Open Records Act, which excepts

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.

We have held on a number of occasions that section 3(a)(11) is designed to protect from disclosure advice and opinion on policy matters and to encourage open and frank discussion between subordinate and chief with regard to administrative action. Attorney General Opinion H-436 (1974); Open Records Decision Nos. 137 (1976); 128 (1976). In Open Records Decision No. 81 (1975), we said that that portion of a report of a school board committee containing the preliminary and

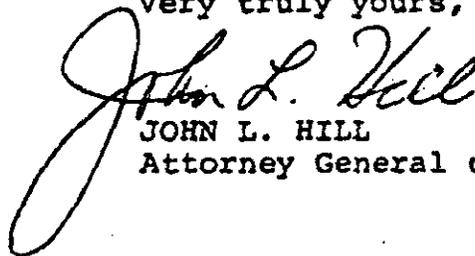
tentative thoughts and suggestions of committee members need not be disclosed, even after the final report has been released. All speculative statements, conclusions and recommendations fall within the ambit of the exception. Open Records Decision No. 86 (1975).

The protection afforded by section 3(a)(11) does not, however, extend to purely factual information, and those portions of an otherwise excepted document which contain factual material must be severed from the remainder and made available to the requestor. Attorney General Opinion H-436 (1974); Open Records Decision Nos. 128 (1976); 81 (1975).

You have supplied us a copy of the information requested. It is a staff report dated October 14, 1976. You also provided a report dated October 15, 1976, which you presented to the Coordinating Board on that date and which you distributed to the public at the meeting. The latter report presents the factual information contained in the earlier report, but does not contain the advice, opinions, and recommendations concerning the withdrawn proposal. We have compared the two documents, and believe that the latter report, dated October 15, 1976, contains the factual information to which the public is entitled.

It is our decision that those portions of the October 14, 1976, report containing advice, opinions, and recommendations are excepted from required public disclosure by section 3(a)(11), and that the October 15, 1976, report properly extracts the factual information contained in the earlier report, so that making the latter report public satisfies the requirements of the Open Records Act.

Very truly yours,



JOHN L. HILL
Attorney General of Texas

APPROVED:



DAVID M. KENDALL, First Assistant



C. ROBERT HEATH, Chairman
Opinion Committee

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