



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

**JOHN L. BILL
ATTORNEY GENERAL**

October 18, 1977

Honorable J. Bruce Aycock
City Attorney
City of Corpus Christi
302 South Shoreline
Corpus Christi, Texas 78408

Open Records Decision No. 179

Re: Whether information reflecting comparisons between wage rate in public and private employment is public under the Open Records Act.

Dear Mr. Aycock:

You ask whether information reflecting comparisons between the wage rate in public and private employment is excepted from required public disclosure under the intra-agency memorandum exception of the Open Records Act, section 3(a)(11) of article 6252-17a, V.T.C.S.

You state that the City of Corpus Christi is presently engaged in collective bargaining negotiations with the International Association of Firefighters, pursuant to article 5154c-1, V.T.C.S. The Association has requested a copy of a survey prepared by the city's personnel department. The survey furnishes information comparing the salaries and benefits of Corpus Christi Fire Department employees with persons who fill comparable positions with the federal government and with private industry.

We have held that the exception of section 3(a)(11) is intended to protect

advice and opinion on policy matters and to encourage open and frank discussion between subordinate and chief concerning administrative action.

Attorney General Opinion H-436 (1974) at 2.

The exception does not operate to permit withholding of purely factual material contained in a memorandum when it is in a form that is severable without compromising the excepted portion of the document. Attorney General Opinion H-436 (1974). See EPA v. Mink, 410 U.S. 73, 91 (1973). We

have applied this distinction on a number of occasions to require disclosure of purely factual information. Open Records Decision Nos. 171, 168, 160 (1977); 149, 128 (1976); 86, 81, 80 (1975); 29, 20 (1974). However even purely factual matter may be exempt if it cannot be extracted without compromising the deliberative process, and a summary of factual material may be excepted if it is a part of the deliberative process even though the facts themselves are elsewhere on the public record. Schwartz v. IRS, 511 F.2d 1303, 1305 (D.C. Cir. 1975); Washington Research Project, Inc. v. Dep't of Health, Education & Welfare, 504 F.2d 238, 250 (D.C. Cir. 1974), cert. den., 421 U.S. 963 (1975); Montrose Chemical Corp. v. Train, 491 F.2d 63, 68 (D.C. Cir. 1974); Koch v. Dep't of Justice, 376 F. Supp. 313, 317 (D.D.C. 1974). See Deering Milliken, Inc. v. Irving, 548 F.2d 1131, 1138 (4th Cir. 1977); National Courier Ass'n v. Bd. of Governors of Federal Reserve System, 516 F.2d 1229, 1242 (D.C. Cir. 1975); Morton-Norwich Products, Inc. v. Mathews, 415 F. Supp. 78, 81 - 82 (D.D.C. 1976); United States v. J.B. Williams Company, Inc., 402 F. Supp. 796, 799 - 801 (S.D. N.Y. 1975).

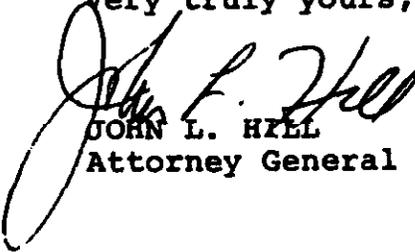
In this case the material relates to the negotiation process. Section 4 of article 5154c-1, V.T.C.S., requires the City to provide compensation and working conditions "substantially the same as . . . [those] which prevail in comparable private sector employment. . . ." Whether certain positions in private employment are "comparable" may be crucial issues to be resolved in the collective bargaining process.

The premature release of a staff memorandum setting out the salary and benefits of certain positions in private employment would disclose the internal deliberative process of the City. The factual information related in the memorandum is not in the exclusive control of the City, but is no doubt as available from the same sources to the requestor as it was to the City. The importance of the document is the selection and evaluation of the relative significance of the facts presented. This is a judgmental process involving the kind of "advice and opinion on policy matters" which is protected by the exception of section 3(a)(11). Nothing indicates that this document is the final product of that process.

It is therefore our decision that, in the circumstances you have described, the memorandum collecting information concerning the wage rate and benefits for employees in "comparable positions" is excepted from disclosure under section 3(a)(11) of the Open Records Act. Of course, if the city possesses raw data on salary rates of private positions which do not reveal that the city staff has determined that those positions are

comparable to the city firefighting positions within the meaning of section 4 of article 5154c-1, V.T.C.S., it is required to reveal such raw data.

Very truly yours,



JOHN L. HILL
Attorney General of Texas

APPROVED:



DAVID M. KENDALL, First Assistant



C. ROBERT HEATH, Chairman
Opinion Committee

jst.