



# The Attorney General of Texas

December 21, 1982

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An Equal Opportunity/  
Affirmative Action Employer

Mr. Chris Hartung  
City Manager  
City of Denton  
Municipal Building  
Denton, Texas 76201

Open Records Decision No. 335

Re: "Cash finding" survey  
prepared for city of Denton  
by outside accountant

Dear Mr. Hartung:

You have requested our decision under the Open Records Act, article 6252-17a, V.T.C.S., as to whether the draft of a report by a private company is public information. The draft is a "cash finding" survey, performed by the company under contract with the city, to determine how the city could increase interest earnings through improved cash management techniques. You state that since the draft is not a final report, it is not subject to disclosure. You also claim that the report is excepted by sections 3(a)(1) and 3(a)(11).

The fact that the report is not final does not except it from disclosure. In Open Records Decision No. 321 (1982), we stated:

[T]he threshold question... is whether material or data which is requested from a governmental body constitutes 'information collected, assembled, or maintained by [the governmental body] pursuant to law or ordinance or in connection with the transaction of official business.' If it does, the next question is whether it fits within any of the exceptions enumerated in section 3(a) of the act; if it does not come within an exception, it must be released. The fact that information has not yet been put into 'final' form is, in other words, not dispositive of whether it must be made available to the public.

Therefore, since the report is definitely "information collected, assembled or maintained... in connection with the transaction of official business," we must determine whether the report fits into the exceptions of sections 3(a)(1) or (11).

Section 3(a)(11) allows exceptions for:

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.

This section applies when information is prepared by outside consultants, as well as when an agency employee or another agency prepares the information. Open Records Decision Nos. 293 and 273 (1981); 192 (1978). However, the section has been construed to except only those portions of a document which "consist of advice and recommendations." Open Records Decision Nos. 273 (1981) and 239 (1980). The exception is designed to protect advice and opinion on policy matters and to encourage open discussion concerning administrative action. Austin v. City of San Antonio, 630 S.W.2d 391 (Tex. Civ. App. - San Antonio 1982, writ ref'd n.r.e.). Attorney General Opinion H-436 (1974). See Open Records Decision Nos. 293 and 273 (1981); 239 (1980); 222 (1979); 174 (1977); 128 (1976); and 86 (1975).

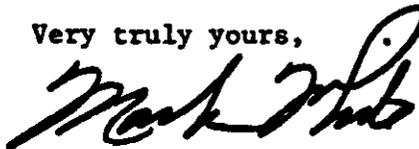
The "cash finding" report describes current practices of the city, gives an opinion as to its effectiveness, and offers advice and recommendations for improvement. The factual information is subject to disclosure; however, advice, opinions, and recommendations may be withheld. We have marked the portions which may be withheld.

You also claim an exception under section 3(a)(1), which excepts:

information deemed confidential by law, either Constitutional, statutory, or by judicial decision.

You have not cited any statute, any section of the constitution, or any judicial decision which would make the factual information in the report confidential as a matter of law. We have examined the material and did not find any records which could be excepted by section 3(a)(1).

Very truly yours,



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