



The Attorney General of Texas

March 9, 1983

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Affirmative Action Employer

Mr. W. Kent Johnson, Director
Legal Services
Texas Department of Mental
Health and Mental Retardation
P. O. Box 12668
Austin, Texas 78711

Open Records Decision No. 359

Re: Whether report to commis-
sioner of Mental Health and
Mental Retardation on problems
at El Paso State Center for
Human Development is excepted
from disclosure under the
Open Records Act

Dear Mr. Johnson:

You have requested our decision under the Open Records Act, article 6252-17a, V.T.C.S., as to whether a report regarding a mental health facility is available to the public.

On November 17, 1982, a special review team appointed by the commissioner of the Department of Mental Health and Mental Retardation submitted to him a report relating to the El Paso State Center for Human Development, a facility of the department. You suggest that parts of the report, which you have marked, are excepted from disclosure under section 3(a)(11), and that two other brief paragraphs are excepted by section 3(a)(2) and 3(a)(3).

As has been frequently noted, section 3(a)(11) excepts advice, opinion, and recommendations contained in inter-agency and intra-agency memoranda from public disclosure. Open Record Decision Nos. 349, 335, 331, 328, 323, 315, 313 (1982). The exception is designed to protect advice and opinion on policy matters, and to encourage open and frank discussion regarding administrative action. Open Record Decision Nos. 344, 308 (1982); 298, 293, 273 (1981); 239 (1980); 225, 222 (1979). We agree that the portions of the report you have marked as "opinion" and "recommendations" are excepted by 3(a)(11).

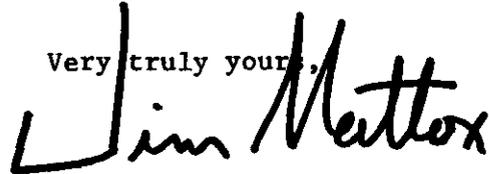
You contend that one paragraph is excepted by section 3(a)(2), as "information in personnel files." The information at issue is a reference to the resignation of a particular individual. This office has often stated that section 3(a)(2) may be invoked only when information reveals "intimate details of a highly personal nature." Open Records Decision Nos. 315 (1982); 298 (1981); 224 (1979). The

information you have marked is not excepted from disclosure by section 3(a)(2).

You suggest that another paragraph is excepted from disclosure only by section 3(a)(3), the litigation exception. You do not indicate that any litigation is pending in regard to this information, and apparently are suggesting merely that its release may encourage litigation. Section 3(a)(3) is applicable only where litigation is pending or reasonably anticipated in regard to a specific matter. Open Records Decision Nos. 351, 331, 326, 323, 311 (1982); 288 (1981); 219 (1978). It is clearly inapplicable to the paragraph you have marked.

We conclude that you may withhold those portions of the report you have marked as "opinion" and "recommendations." The remainder should be disclosed.

Very truly yours,

A handwritten signature in black ink that reads "Jim Mattox". The signature is written in a cursive, slightly slanted style.

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