



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

January 12, 1989

Joe B. Hairston
Hairston, Walsh, Anderson,
Underwood & Schulze, P.C.
811 Barton Springs Road
P.O. Box 2156
Austin, Texas 78704

Dear Mr. Hairston:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 5317; this decision is OR89-017.

Under the Open Records Act, all information held by governmental bodies is open unless the information falls within one of the act's specific exceptions to disclosure. The act places on the custodian of records the burden of proving that records are excepted from public disclosure. If a governmental body fails to claim an exception, the exception is ordinarily waived unless the information is deemed confidential under the act. See Attorney General Opinion JM-672 (1987). The act does not require this office to raise and consider exceptions that you have not raised.

The Brookeland Independent School District received a request for a copy of a "management letter" sent to the district by the company that conducted an audit for the district. You indicate that the audit itself has already been released. You claim that section 3(a)(11) protects the management letter from required disclosure.

Section 3(a)(11) protects inter-agency and intra-agency memoranda and letters that contain advice and opinion that plays a role in a governmental body's decision-making process. Open Records Decision No. 464 (1987). Section 3(a)(11) does not apply ordinarily to correspondence between a governmental body and an outside entity. See Open Records Decision No. 474 (1987). Section 3(a)(11), however, can apply to information submitted to a governmental body by a consultant if the governmental body solicits the

information, the information consists of advice, and the information meets the test under section 3(a)(11). See Open Records Decision No. 466 (1987).

The letter at issue here consists of the auditors' recommendations about the management of the district's funds. Although facts do not fall within the ambit of section 3(a)(11), see Open Records Decision No. 450 (1986), the amount of fact in the letter is minimal. Further, the facts revealed are taken from the audit; they have already been released to the public. Consequently, the district may withhold the letter under section 3(a)(11).

Finally, you should note that section 3(a)(11) is a "permissive exception." See Art. 6252-17a, sec. 14(a). For this reason the district may release the letter at its discretion so long as, once it releases the letter to one member of the public, it releases it to all members of the public who request it. See id.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR89-017.

Yours very truly,

Open Government Section
of the Opinion Committee 

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of the Opinion Committee
Prepared by Jennifer S. Riggs
Chief, Open Government Section

JSR/bra

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