



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

January 12, 1989

David Buesing
Chief of Police
Pflugerville Police Department
P.O. Drawer 679
Pflugerville, Texas 78660-0679

Dear Chief Buesing:

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# 5291; this decision is OR89-019.

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 Pflugerville Police Department received a request for a letter regarding a request for the addition of a yellow flashing light and other traffic improvements that was sent from the police department to the Texas Highway Department. You state that you believe the letter is "an inter-departmental letter" and ask whether the letter may be withheld under "an exemption." You do not claim a specific exception. Because you refer to "an inter-departmental letter," we reviewed the letter under section 3(a)(11) of the act. In the future, however, you must raise exceptions expressly and explain why they apply to specific documents.

Section 3(a)(11) protects inter-agency and intra-agency memorandums 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). Although the letter at issue could be viewed as a "recommendation" to

David Buesing
January 12, 1989
Page 2

the Texas Highway Department, it is actually a request by the city for action by the Highway Department. This letter is not protected by section 3(a)(11). See Open Records Decision No. 474 (1987).

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 OR89-019.

Yours very truly,

Open Government Section
of the Opinion Committee

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

JSR/bra

Copy to: Rob Dickson
9617 Great Hills Trail, #1432
Austin, Texas 78759

Ref. ID# 5291