



**THE ATTORNEY GENERAL  
OF TEXAS**

**JIM MATTOX  
ATTORNEY GENERAL**

February 17, 1989

Honorable Mike Driscoll  
Harris County Attorney  
1001 Preston, Suite 634  
Houston, Texas 77002

ATTENTION: Ms. Dori A. Wind  
Division Chief

Dear Mr. Driscoll:

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# 5555; this decision is OR89-58.

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 Harris County Hospital District received an open records request for a preliminary report submitted by an outside consultant pertaining to the responsibilities and duties of the new administrator of the district. You contend that section 3(a)(11) of the Open Records Act excepts this report from required public disclosure because no decision has been made as to whether to accept the report in its current form or request the consultant to investigate other alternatives before submitting his report for approval by the district's Board of Managers.

Section 6(1) of the act provides that, inter alia, reports made for or by governmental bodies are public information "upon completion." This section does not, however, imply that "incomplete" reports, or reports that have not been "accepted" by a governmental body, are

automatically excepted from required disclosure. Open Records Decision No. 460 (1987). The applicable test for required disclosure is twofold: whether the requested information is collected, assembled, or maintained by a governmental body, and, if so, whether the information falls within one of the specific exceptions to disclosure under section 3(a) of the act. Id.

Section 3(a)(11) of the act excepts inter-agency and intra-agency memoranda and letters, but only to the extent that they contain advice, opinion, or recommendation intended for use in the entity's deliberative process. Open Records Decision No. 464 (1987). The purpose of this section is "to protect from public disclosure advice and opinions on policy matters and to encourage frank and open discussion within the agency in connection with its decision-making processes." Austin v. City of San Antonio, 630 S.W.2d 391, 394 (Tex. App.--San Antonio 1982, writ ref'd n.r.e.).

Section 3(a)(11) does not protect facts and written observation of facts and events that are severable from advice, opinions, and recommendation. Open Records Decision No. 450 (1986). If, however, the factual information is so inextricably intertwined with material involving advice, opinion, or recommendation as to make separation of the factual data impractical, that information may be withheld. Open Records Decision No. 313 (1982).

After reviewing the consultant's report, this office has determined that you may withhold only the sections of the report titled Consultant's Solution and Recommendations and Conclusion pursuant to section 3(a)(11); you must release the remainder of the report.

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 OR89-58.

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

Honorable Mike Driscoll

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Page 3

Copies to: Jo Ann Zuniga  
Houston Chronicle  
P. O. Box 4260  
Houston, Texas 77210

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