



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

March 6, 1989

Mr. J. Scott Chafin
University Counsel
University of Houston System
4600 Gulf Freeway, Suite 425
Houston, Texas 77023

Dear Mr. Chafin:

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# 5242; this decision is OR89-77.

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 University of Houston television station, KUHT, received an open records request for memoranda involving information dealing with "story or program ideas" and the Association for Community Television, which supports KUHT. You state that the university has released much of the requested information; you seek, however, to withhold several of these documents pursuant to section 3(a)(11) of the Open Records Act.

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 decision-making 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

Mr. J. Scott Chafin
March 6, 1989
Page 2

discussion within the agency in connection with its decision-making process." 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).

This office generally agrees with your assessment that many of the documents submitted to this office come within the protection of section 3(a)(11) in their entirety because the factual information is inextricably intertwined with protected information. Some of the documents, however, contain factual information that may be separated from advice, opinion, or recommendation. We are returning to you the documents that contain some public information; we have marked the portions of those documents that you may withhold pursuant to section 3(a)(11).

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 OR89-77.

Yours very truly,

Open Government Section
of the Opinion Committee

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Prepared by Steve Aragon
Assistant Attorney General

SA/RWP/bc

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Ref: ID# 5242

Enclosures: Marked documents