



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

August 16, 1989

Mr. Joel V. Roberts
City Attorney
City of Odessa
P. O. Box 4398
Odessa, Texas 79760-4398

Dear Mr. Roberts:

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# 7072; this decision is OR89-255.

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 City of Odessa received an open records request for an employee's written response to an "exit interview," which the requestor, a former city employee, gave to the city manager. You contend that subsections 3(a)(2) and (a)(11) of the Open Records Act except the written response from required public disclosure.

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 executive deliberative process. See Open Records Decision No. 464 (1987). We have marked those portions of the written response that you may withhold pursuant to section 3(a)(11).

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Although a small portion of the written response normally would come under the protection of section 3(a)(2), which protects the privacy interests of public employees, because the information pertains to the requestor, it and those portions of the response not marked must be released at this time. See Open Records Decision No. 481 (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 OR89-255.

Yours very truly,

Open Government Section
of the Opinion Committee

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of the Opinion Committee

Approved by Jennifer S. Riggs
Chief, Open Government Section

JSR/RWP/bc

Enclosures: Marked documents
ORD-481
ORD-464

Ref.: ID# 7072