



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

October 5, 1989

Mr. J. Scott Chafin
University of Houston System
Office of University Counsel
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# 6634; this decision is OR89-286.

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 System (the university) received a request for "access to and copies of the results of the audits" of the university's Administrative Computing and microcomputing section of the Academic Department. You have provided for our review documents prepared by the university's internal auditor for the Board of Regents of the University of Houston System. The documents include: a report to the Board of Regents; a computing system audit review; transcribed minutes of a meeting of the Board of Regents; an evaluation of the university's data processing system; a record of interviews/conservations with data processing personnel; articles published in trade periodicals; and risk analysis reports and analyses of data processing costs incurred by the university. You raise sections 3(a)(11) and 3(a)(16) as exceptions to required public disclosure of the information sought.

Mr. J. Scott Chafin
October 5, 1989
Page 2

In your letter dated May 31, 1989, you indicate that Exhibits "B", "E", and "G", i.e. the minutes of the meeting of the Board of Regents, the published articles and the analysis of costs incurred by the university are not excepted from disclosure under the act. We agree with your assertion. This information is not protected under the exceptions you have raised. You must release these documents if you have not already done so. However, you claim that the remainder of the information is protected from disclosure under section 3(a)(11).

The purpose of section 3(a)(11) is to protect from public disclosure advice and opinions on policy matters in order to encourage frank and open discussion within an 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.); see Open Records Decision Nos. 464 (1987); 222 (1979). Only advice, opinion or recommendation that actually plays a role in the policy-making/decision-making process is excepted from disclosure. Open Records Decision No. 464.

The information at issue consists of the auditor's report to the Board of Regents; an administrative computing system audit review; records containing interviews/conversations with faculty members and data processing personnel; and a risk analysis report prepared by internal auditing personnel. In our opinion, this information cannot be characterized as "advice, opinion or recommendation on policy-making matters." It discusses the University's internal data processing problems, articulates the impressions of the internal auditing personnel and assesses the extent to which the University's data processing/computing system can be improved. We believe that this is not the type of information which section 3(a)(11) protects.

You also indicate that additional information, specifically the State Auditor's audit for fiscal year 1988, which the university possesses, relates to the information sought by the requestor. You claim that this information is protected by sections 3(a)(16) and 6(1) of the act. You claim that at the time of the request the audit had not been completed.

Section 3(a)(16) protects "the audit working papers of the State Auditor." This section only applies to audit information prepared by the Office of the State Auditor. Open Records Decision No. 211 (1978). By implication, section 3(a)(16) makes public audit working papers other

Mr. J. Scott Chafin
October 5, 1989
Page 3

than those of the State Auditor. Moreover, not all information contained in the state auditor's files is protected by section 3(a)(16). Open Records Decision No. 164 (1977). Only information, that reveals the timing, scope, or strategy of an audit, or opinion and discussion expressed by the participants in an audit may be withheld; factual information in the audit must be disclosed. Id.

You state that the audit information has not been released because at the time of the request the audit had not been completed. Section 6(1) of the Act specifically makes public reports, audits, evaluations and investigations made of, for, or by, governmental bodies upon completion. Upon receipt of this ruling, if the audit has been completed, it must be released. See V.T.C.S. art. 6252-17a, § 6(1).

In summary, you must release all of the information requested. Also, you must release the State Auditor's fiscal audit for 1988 upon its completion. 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 OR89-286.

Yours very truly,

*Open Government Section
of the Opinion Committee*

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of the Opinion Committee
Approved by David A. Newton
Assistant Attorney General

DAN/FAF/bc

Ref.: ID# 6634

cc: Ms. Ruthie Piller
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