# THE ATTORNEY GENERAL OF TEXAS

JIM MATTOX
ATTORNEY GENERAL

October 24, 1989

Mr. Tommy Gunn
City Attorney
City of Pinehurst
202 South Border Street
Orange, Texas 77630

Dear Mr. Gunn:

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# 6145; this decision is OR89-343.

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. Attorney General Opinion H-436 (1974). The act does not require this office to raise and consider exceptions that you have not raised.

The City of Pinehurst received an open records request for the following:

> 1. reasons and documentation pertaining to the termination of the city's former chief of police;
>
> 2. copies of disciplinary actions taken by the chief of police against officers within the department from April 1, 1988, through April 1, 1989; and
>
> 3. records of the number of citations issued by officers per month during the same time period.

You contend that this information comes under the protection of section 3(a)(1), (a)(2), and (a)(11) of the Open Records Act.

You submitted to this office one document, a memorandum from the city administrator to the city council, that comes within the ambit of the first request. After carefully reviewing the contents of this document, this office has determined that it may be withheld in its entirety pursuant to section 3(a)(11). Section 3(a)(11) of the act excepts inter-agency and intra-agency memoranda and letters, but only to the extent that they contain sensitive advice, opinion, or recommendation intended for use in the entity's policymaking/deliberative process. Open Records Decision No. 464 (1987). Section 3(a)(11) is intended to protect the "executive" or high-level decisionmaking process. See Attorney General Opinion H-436 (1974). The memorandum you submitted to this office falls squarely within the protection of section 3(a)(11), containing as it does advice, opinion and recommendation for use in the city's deliberative process regarding employment of the city's police chief.

You state that this memorandum is the only document that ever existed that documents the reasons for the police chief's termination. Please submit to this office within ten days of receipt of this letter an affidavit attesting to the fact that no other records, e.g. citizen complaints, exist that could come within the scope of this request.

Because you failed to submit to this office for review any documents coming within the second request, this office is unable to determine the applicability of the exceptions you raise; this information is therefore deemed to be public and should be released immediately. Similarly, the records sought in the third request do not come under the protection of any of the exceptions you raise; these records also must be released without delay.

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 OR89-343.

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/RWP/le

Ref.: ID# 6145
ID# 6317