



THE ATTORNEY GENERAL  
OF TEXAS

JIM MATTOX  
ATTORNEY GENERAL

May 24, 1990

Ms. Merri Schneider-Vogel  
Attorney for Huffman I.S.D.  
2900 South Tower Pennzoil Place  
Houston, Texas 77002-2781

OR90-203

Dear Ms. Schneider-Vogel:

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# 9024.

The acting superintendent of the Huffman Independent School District [HISD] received a request for a copy of a letter and recommendation made by an attorney to the HISD Board of Trustees. The attorney was hired to investigate charges against the current superintendent, who is now on administrative leave, and to make a recommendation about whether there were grounds for the termination of the current superintendent's contract. You claim exception to the release of the requested information based on section 3(a)(1) of the Open Records Act as information made confidential by the attorney-client privilege and section 3(a)(11).

Whether the attorney-client privilege applies to this information depends on whether it is a purely factual report, or whether it consists of legal advice and recommendations. See Open Records Decision No. 230 (1979). It is our decision that the document entitled "recommendation" is within the attorney-client privilege and is excepted from disclosure pursuant to section 3(a)(1) of the Open Records Act. See Open Records Decision No. 210 (1978). The letter, however, contains no legal advice or recommendation; thus, it may not be withheld pursuant to section 3(a)(1) based on the attorney-client privilege. See Open Records Decision No. 462 (1987). You also raised section 3(a)(11) as an exception to the disclosure of this information.

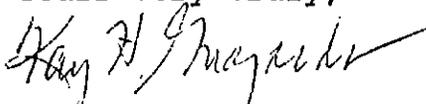
Section 3(a)(11) protects from disclosure

inter-agency or intra-agency memorandums or letters which would not be available by law to a party in litigation with the agency.

As the portion of the information entitled "recommendation" has been found to be within the parameters of the attorney-client privilege aspect of section 3(a)(1), we limit our section 3(a)(11) analysis to the letter from the attorney. This exception applies to memoranda prepared by consultants of a governmental body. Open Records Decision No. 298 (1981). It permits the withholding of "advice, opinion, and recommendations." Austin v. City of San Antonio, 630 S.W.2d 391 (Tex. App. - San Antonio 1982, writ ref'd n.r.e.). Because the letter contains no advice, opinion, or recommendation to the Board of Trustees of HISD, section 3(a)(11) does not apply and it must be released.

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 OR90-203.

Yours very truly,



Kay H. Guajardo  
Assistant Attorney General  
Opinion Committee

KHG/le

Ref.: ID# 9024

Enclosures: Documents Sent

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