



THE ATTORNEY GENERAL
OF TEXAS

JIM MATTOX
ATTORNEY GENERAL

June 11, 1990

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

OR90-219

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# 7075.

The University of Houston System received an open records request for various information itemized as requests one through six. The system seeks to withhold the information encompassed by requests numbered 1, 2, and 6. Items 1 and 2 are requests for documents, records, and reports prepared by McKinney and Co., Inc., or any of its consultants for the university system or any of its officials about the organizational structure of the university system, as well as correspondence from the system and its board of regents to McKinney and Co., Inc., or any of its consultants. McKinney and Co. is a consulting firm engaged by the system to study and recommend changes in the structure and organization of the system and make recommendations about the relationships among the system's administration, component campuses, chancellors, and presidents. Item 6 is a request for all correspondence to the University of Houston System regents chairmen since January 1983, particularly letters from Texas A & M University System Chancellor Perry Adkinson to University of Houston System Board of Regents Chairman Ken Lay.

The University seeks to withhold the information encompassed in items 1, 2, and 6 from public disclosure under section 3(a)(11) of the Open Records Act. Section 3(a)(11) of the act excepts from required public disclosure inter-agency and intra-agency memoranda and letters, but only to the extent that they contain advice, opinion, or

recommendation for use in the entity's deliberative process. Open Records Decision No. 464 (1987); 239 (1980).

Exhibits A and B, which you submitted as responsive to requests 1 and 2, consist of a report and correspondence from the consulting firm. Included in these exhibits are three other items: "Prime Campus Audiences and Communication Plans," "Special Needs for Institutional Enhancement," and "Graphic Identity Plan." You indicate that these are draft reports prepared by McKinsey and Co., Inc. Section 3(a)(11) applies where information is prepared by outside consultants. See Open Records Decision No. 335 (1982); 293(1981). As any facts in these documents are so inextricably intertwined with material involving advice, opinion, or recommendation as to make separation of the factual data impractical, we conclude that the material in exhibits A and B may be withheld in their entirety under section 3(a)(11). As drafts, the reports may be withheld under section 3(a)(11). See Open Records Decision No. 547 (1990). However, when a final report has been adopted by the regents, section 3(a)(11) will no longer apply.

The correspondence you submitted in response to item 6 includes a) intra-agency memos from persons within the university system to the chairman of the board of regents concerning issues of concern to the board; b) general, complaint, suggestion or other unsolicited letters from citizens and/or alumni to the chairman; and c) letters among the regents or from various regents to the chairman and from the regent of Texas A & M University.

In Open Records Decision No. 429 (1985), this office indicated that information protected by section 3(a)(11) must be prepared by a person or entity with an official reason or duty to provide the information in question. Thus, the unsolicited citizen or alumni letters containing complaints, suggestions, opinions, etc., are not protected from required public disclosure by section 3(a)(11). We have marked one page of a letter from an alumnus which is protected from disclosure under section 3(a)(14) and 14(a) of the act, as it relates to his career as a student at the university and therefore constitutes student records protected by those sections of the act. See Open Records Decision No. 539 (1990). This page must be withheld. Section 3(a)(11) embraces character references solicited by the department. See Open Records Decision No. 466 (1987). The inter-agency memoranda or letters to the chairman from other regents on policy issues, memos, and letters from persons within the university system to the

chairman, and the letter from the chairman of Texas A & M University System to the the chairman of the University of Houston may be withheld. The memo from Glenn Goerke to Richard Van Horn dated April 24, 1989, contains no advice, opinion or recommendation and must be released, along with the cover letter from Clarence Kendall. In the memo from Richard Van Horn to Kenneth Lay of May 26, 1989, concerning Dr. Paul Chu, the first two and the last paragraphs contain only facts. Those paragraphs must be released, while the remainder of the memo may be withheld. We have marked the documents according to the principles set forth in this ruling letter.

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 OR90-219.

Yours very truly,



David A. Newton
Assistant Attorney General
Opinion Committee

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Ref.: ID# 7075, 8155

Enclosure: Marked Documents (Exhibits A, B, & C)

cc: Guy Cantwell
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