



**THE ATTORNEY GENERAL  
OF TEXAS**

**JIM MATTOX  
ATTORNEY GENERAL**

August 8, 1990

Ms. Elaine H. Piper  
Assistant City Attorney  
City of El Paso  
Police Legal Advisor  
2 Civic Center Plaza  
El Paso, Texas 79999

OR90-365

Dear Ms. Piper:

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# 10183.

The City of El Paso received an open records request for, inter alia, the background investigation of an applicant with the El Paso Police Department. We have considered the exceptions you claimed, and have reviewed the documents at issue. Section 3(a)(11) of the act protects advice, opinion, or recommendation intended for use in the deliberative process. Open Records Decision No. 464 (1987). 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. In this regard, section 3(a)(11) protects solicited opinions of character references the police department has contacted during the applicant's background check. See Open Records Decision No. 466 (1987) (enclosed).

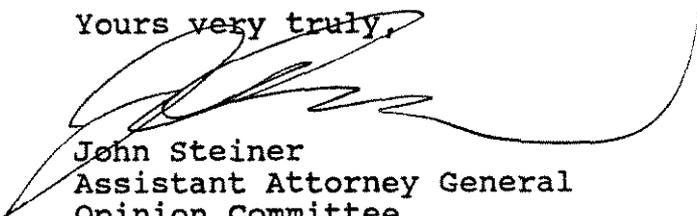
Although section 3(a)(11) does not protect facts and written observation of facts and events that are severable from advice, opinions, and recommendation, Open Records Decision No. 450 (1986), if the factual information is so inextricably intertwined with material involving advice, opinion, or recommendation as to make separation of the factual data impractical, that information may also be withheld. Open Records Decision No. 313 (1982). We have

marked those portions of the background investigation that you may withhold pursuant to section 3(a)(11).

Although portions of the background check, e.g. the applicant's financial background are protected by the common law right to privacy, see Open Records Decision No. 481 (1987), because the requestor is seeking his own application information, those portions of the investigation must be released to him. See V.T.C.S. art. 6252-17a, § 3B; see also, Open Records Decision No. 481 (1987). None of the remaining information comes under the protection of the other exceptions that you raise; consequently the remaining information 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 OR90-365.

Yours very truly,



John Steiner  
Assistant Attorney General  
Opinion Committee

JS/RWP/le

Ref.: ID# 10183

Enclosure: Open Records Decision No. 466