



THE ATTORNEY GENERAL
OF TEXAS

JIM MATTOX
ATTORNEY GENERAL

October 11, 1990

Mr. Robert Giddings
The University of Texas System
201 West Seventh Street
Austin, Texas 78701

OR90-485

Dear Mr. Giddings:

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# 10449.

We have considered the exceptions you claimed, specifically sections 3(a)(1) (as it incorporates the attorney-client privilege) and 3(a)(11), and have reviewed the documents at issue. You provide for our inspection two attachments. Attorney-client privilege is asserted with respect to "attachment one." Section 3(a)(11) is asserted with respect to "attachment two."

The attorney-client privilege is more precisely incorporated into the Open Records Act by section 3(a)(7), q.v. See also Open Records Decision No. 462 ((1987). State Bar Rule 1.05 provides for the confidentiality, inter alia, of information protected by Rule 503 of the Texas Rules of Evidence. The purpose of the attorney-client privilege is to promote unrestrained communication between the attorney and client in matters in which the attorney's professional advice or services are sought. West v. Solito, 563 S.W.2d 240, 245 (Tex. 1978). With respect to the material submitted for our inspection pursuant to section 7 of the Open Records Act in attachment one, the letters between the university and the law firm representing it in the matter of its establishment of a student radio station are within the attorney-client privilege and are excepted from public disclosure. The letters between the university's president and its general counsel regarding this matter (dated July, 6 and July 8, 1988, respectively) are similarly excepted. However, the letter dated January 15, 1987, from the attorney for Duffy Broadcasting to Dr. Cunningham and Mr. Lytle is not within the attorney-client privilege, as the communication is not between attorney and client. Similarly, the response dated May 18, 1988, is not within the privilege. Neither party to the communication between Mr. Lytle and Mr. Tuerff is identified as an attorney. Consequently, the privilege would not apply to this

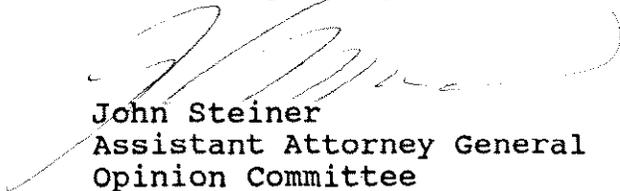
document. The documents we have found to be within the attorney-client privilege may be withheld.

Section 3(a)(11) excepts from required public disclosure advice, opinion, and recommendation used in the deliberative process within an agency or between agencies. Factual material, where severable, must be released. Open Records Decision No. 559 (1990). Attachment two contains a variety of documents. The nature, use, and intended audience of the documents is not always apparent on the face of the documents. Additionally, it is apparent that some factual material is included in the documents. Under the Open Records Act, all information held by governmental bodies is open unless it 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. Attorney General Opinion H-436 (1974). Although you sent copies or representative copies of the information requested, you did not mark the information to show how the asserted exception applies to specific portions of the documents. It is clear that the exception you claim does not apply to all of the information submitted for review. Your burden under section 7(a) is to request a decision on whether specific information is within specific exceptions. A claim that an exception applies with no explanation of why it applies will not suffice. Id. Consequently, this office cannot consider your claim with respect to section 3(a)(11).

We are returning to you the documents you submitted for review as attachment two. Please resubmit the documents with markings to correlate with the specific exception you claim, or otherwise explain how the exception you claim applies to specific documents or portions thereof. You have 10 days from receipt of this letter in which to resubmit the documents at issue. Otherwise, the 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 OR90-485.

Yours very truly,


John Steiner
Assistant Attorney General
Opinion Committee

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Enclosure: Documents Submitted

cc: Shaya Zucker
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