



DAN MORALES
ATTORNEY GENERAL

Office of the Attorney General
State of Texas

February 26, 1991

Ms. Diana L. Granger
Deputy City Attorney
City of Austin
P. O. Box 1088
Austin, Texas 78767-8828

OR91-111

Dear Ms. Granger:

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# 11388.

The City of Austin received an open records request for, inter alia, "all correspondence, notes, and other documents from your office regarding cable television activities for the period of April 1 to October 1, 1990." You seek to withhold three memoranda that you contend come under the protection of sections 3(a)(1), 3(a)(7), and 3(a)(11).

We note initially that the city received the open records request on December 20, 1990 and subsequently requested a decision from this office on January 2, 1991. Consequently, you failed to request a decision within the ten days required by section 7(a) of the Act.

Section 7(a) of the act requires a governmental body to release requested information or to request a decision from the attorney general within ten days of receiving a request for information the governmental body wishes to withhold. When a governmental body fails to request a decision within ten days of receiving a request for information, the information at issue is presumed to be public. City of Houston v. Houston Chronicle Publishing Co., 673 S.W.2d 316, 323 (Tex. App. -- Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The governmental body must show a compelling interest to withhold the information to overcome this presumption. Open Records Decision No. 319; see City of Houston v. Houston Chronicle Publishing Co., 673 S.W. 2d at 324.

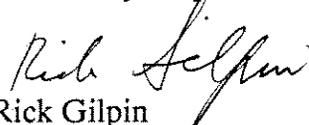
The attorney-client privilege protected by section 3(a)(7), as well as the protection of section 3(a)(11), is waivable. When the city failed to request an opinion from this office within the required ten days of receipt of the records request, it effectually waived the

protection of those exceptions. You have not presented this office with compelling reasons as to why the protection of sections 3(a)(7) and 3(a)(11) should be preserved.

On the other hand, section 3(a)(1) of the act protects "information deemed confidential by law, either Constitutional, statutory, or by judicial decision," including the common law right to privacy. Industrial Found. of the South v. Texas Indus. Accident Bd., 540 S.W.2d 668 (Tex. 1976), cert. denied, 430 U.S. 931 (1977). Because the release of confidential information could impair the rights of third parties and because its improper release constitutes a misdemeanor, there are compelling reasons for not releasing this type of information. See V.T.C.S. art. 6252-17a, § 10(e). Common-law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and it is of no legitimate concern to the public. Id. at 683-85. Portions of requested information meet this test. We have marked those that you may withhold pursuant to section 3(a)(1). Unless you provide this office, within 10 days of receipt of this letter, compelling reasons as to why the remaining information contained in the memoranda should be withheld pursuant to sections 3(a)(7) or 3(a)(11), 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 OR91-111.

Yours very truly,


Rick Gilpin
Assistant Attorney General
Opinion Committee

RG/RWP/lcd

Ref.: ID# 11388, ID# 11560

Enclosures: Open Records Decision No. 319
Marked documents

cc: R. Luther Carpenter
all systems go!
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