



DAN MORALES
ATTORNEY GENERAL

Office of the Attorney General
State of Texas

April 22, 1991

Mr. David A. Talbot, Jr.
General Counsel
State of Texas
Office of the Governor
P.O. Box 12428
Austin, Texas 78711

OR91-204

Dear Mr. Talbot:

You ask whether a report (hereinafter, the "report") addressed to the governor, the lieutenant governor, and the speaker of the house by a professor at the Lyndon B. Johnson School of Public Affairs is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 12220.

We have considered the exception you claimed, specifically 3(a)(11), and have reviewed the documents at issue. The documents submitted for our review consist of the report itself, a letter from the author of the report to a member of the governor's staff, and a single page of hand written notes. The report discusses matters which concern the addressed officials in their capacities as members of the State Preservation Board, though we do not understand the report to have been solicited by or submitted to the State Preservation Board as a body. Rather, the report was solicited by the speaker and submitted to the addressed officials in their individual capacities. The report consists, in its entirety, of the advice, opinion, and recommendations of its author. You advise that the author of the report has particular expertise in the subject matter of the report.

This office has previously held that section 3(a)(11) will apply where an advisory memorandum is prepared and provided to a governmental body by an outside consultant with some official reason to do so. Open Records Decision No. 466 (1987). In this case, the addressed officials, including the governor, have authority to inquire into matters concerning the State Preservation Board. You advise that the report was initiated by the request of a governmental official who had this purpose in seeking the advice of the author of the report. Accordingly, we

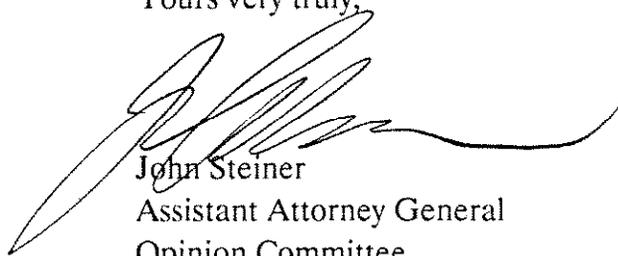
find that the author of the report had an official reason for making the report. *Id.* Moreover, the governor and the speaker are involved in a common deliberative process concerning the subject matter of the report. Accordingly, we find that the report is within the scope of section 3(a)(11) which is intended to protect from public disclosure advice and opinions on policy matters and to encourage frank discussion within an agency, or between agencies, in connection with the decision making process. *Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.--San Antonio 1982, writ ref'd n.r.e.).

The letter from the author of the report to the governor's staff member consists largely of recommendations and inquiries related to the author's advice as reflected in the report. The letter contains no purely factual information. For reasons elaborated above, we find that the author of the report had an official reason for writing the letter, and that its contents are properly within section 3(a)(11).

Finally, we consider the handwritten notes. The notes were made by a member of the State Preservation Board other than the governor during a meeting with the author of the report. The notes appear to be a memorialization of advice and recommendations received during the meeting with the author of the report, and would accordingly be within section 3(a)(11).

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 OR91-204.

Yours very truly,



John Steiner
Assistant Attorney General
Opinion Committee

JS/lb

Mr. David A. Talbot, Jr. - Page 3 - (OR91-204)

Ref.: ID# 12228

Enclosure: Open Records Decision No. 466

cc: Mr. Keith Elkins
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