



DAN MORALES
ATTORNEY GENERAL

Office of the Attorney General
State of Texas

May 21, 1991

Mr. George E. Chapman
Executive Director
Texas Workers' Compensation Commission
4000 South IH-35
Austin, Texas 78704

OR91-246

Dear Mr. Chapman:

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# 12316 .

We have considered the exception you claimed, specifically section 3(a)(11), and have reviewed the documents at issue. Those documents consist of samples forwarded to us of applicant job selection/approval forms, applicant prescreen ranking worksheets, interview questions and notations of responses to such questions made by the applicants, and reference check questions and notations of answers to such questions made by the agency employee conducting the reference check.

Section 3(a)(11) protects "inter-agency or intra-agency memorandums or letters which would not be available by law to a party in litigation with the agency." Section 3(a)(11) was designed to protect advice and opinion on agency matters in order to encourage open and frank discussion in the deliberative process of governmental bodies. Section 3(a)(11), however, only excepts from disclosure advice, opinion, and recommendation and not facts or written observations of fact. Finally, information from outside sources is protected only when it is prepared by a person or entity with an official reason or duty to provide the information in question. *See* Open Records Decision No. 470 (1987) at 7.

You may withhold from disclosure pursuant to section 3(a)(11) on the applicant selection/approval form only the information contained in the "comments" portion of the form since it consists of the interviewer's evaluation of the candidates. The remaining information on the form consists of the names of the final candidates for a position, a summary of their education and experience, factual information about the position, and the name of the interviewer. The names and backgrounds of candidates are not excepted from disclosure by section 3(a)(11). Open Records Decision No. 439 (1986). As stated above, facts are not excepted from disclosure pursuant to section 3(a)(11), and thus, the factual information about the position and the name of the interviewer must be disclosed.

With regard to the prescreen ranking worksheet, only the actual rankings of the applicants may be withheld from disclosure pursuant to section 3(a)(11). Open Records Decision No. 249 (1980). The remaining information on the form consists of the names of the applicants ranked, factual data about the position and its posting, the identity of the employee conducting the screening, and the criteria employed in the screening and the weight given to each factor. None of this information is advice, opinion, or recommendation used in internal agency deliberations.

On the form entitled sample reference check questions, you may withhold pursuant to section 3(a)(11) only the notations of the responses made by the applicant's reference. The sample form we reviewed contained notations of various recommendations and opinions obtained from the applicant's reference. Although the notations reflect information from outside sources, the information was collected by an agency employee for use and was actually used in the agency's internal deliberative process. Open Records Decision No. 466 (1987).

We turn now to the sheets entitled "interview questions and notes." Neither the questions nor the notations of the applicants' answers contain interagency or intra-agency advice, opinion, and recommendation used in the agency's deliberative process. The questions standing alone not within the section 3(a)(11) exception. The sample responses that we have reviewed to the interview questions also do not contain interagency or intra-agency advice, opinion, or recommendation. Instead, those responses indicate the applicant's qualifications for the position or his assessment of those qualifications.

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 OR91-246.

Yours very truly,



Celeste A. Baker
Assistant Attorney General
Opinion Committee

CAB/lb

Ref.: ID# 12316

Enclosure: Open Records Decision No. 466, 470, 439, 249.

cc: Peter Ejirika
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