



DAN MORALES  
ATTORNEY GENERAL

Office of the Attorney General  
State of Texas

September 25, 1991

Ms. T. A. "Tracy" Pounders  
Assistant City Attorney  
Office of the City Attorney  
City Hall  
Dallas, Texas 75201

OR91-441

Dear Mr. Pounders:

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# 13021.

You have received a request for all of the original questionnaires relating to an internal survey of the Southside Wastewater Treatment Plant entitled, "Operators' Internal Control Survey and Training Questionnaire." You maintain that the survey is exempt from public disclosure under sections 3(a)(1) and 3(a)(11).

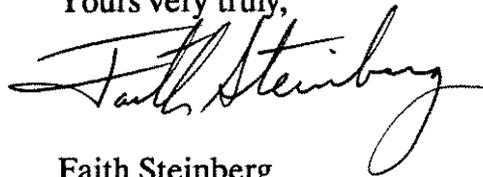
Your 3(a)(1) claim is based on decisions of this office extending 3(a)(1) protection to information falling within the "informer's privilege." Those opinions protected information furnished to a law enforcement agency or an administrative official charged with the investigative or enforcement duties relating to the detection of violations of the law in a particular sphere. The privilege is intended to aid the investigation of crime by preserving the flow of information between civilians and enforcement officials, information that would not be given without the assurance of confidentiality. See Open Records Decision No. 515 (1988). The questionnaire contains the introductory statement that "[t]his survey is being conducted to assure compliance with proper sampling procedures as defined by the Texas Water Commission and Division policy." From what we deduce from the records before us, the Dallas Water Utilities distributed the questionnaire not for the purpose of detecting violations of the law, but to "review its training programs and determine if its employees are functioning at a competent level." City of Dallas Open Records Request Letter, July 19, 1991. We also note that the questionnaire itself would not lead a respondent to believe that answers would be held

confidential; on the contrary, the last question of the survey asks the respondent to indicate whether he or she would like "to have a *private* discussion regarding any aspect of this questionnaire or related issues." (Emphasis added.) In Open Records Decision No. 579 (1990), this office indicated that not every report containing information about possibly illegal behavior will support the application of the informer's privilege. The completed questionnaires in this case contain no indication that they were related to a law enforcement investigation, nor any basis for respondents to believe that their answers would be confidential. Accordingly, we conclude that the informer's privilege aspect of section 3(a)(1) does not apply in this case.

You have also claimed that section 3(a)(11) excepts the questionnaires from disclosure. That exception protects inter- or intra-agency memoranda from disclosure to the extent that they contain advice, recommendation or opinion used in the decision-making process. Facts and written observations of facts contained in memoranda are not exempt under this section Open Records Decision No. 462 (1987). Only the answers to the survey section entitled "Questions Related to Training Needs" may be withheld under this exception; the other sections call for nonexempt factual information.

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 OR91-441.

Yours very truly,



Faith Steinberg  
Assistant Attorney General  
Opinion Committee

FS/GCK/lb

Ref.: ID# 13021

Enclosures: Open Records Decision No. 579, 462

cc: Gregory Protich  
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