



DAN MORALES
ATTORNEY GENERAL

Office of the Attorney General
State of Texas

September 30, 1991

Mr. Tom Kennedy
Administrator
Rolling Plains Memorial Hospital
P. O. Box 690
Sweetwater, Texas 79556

OR91-449

Dear Mr. Kennedy:

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# 12288.

The Nolan County Hospital District (the district) received from an applicant for a district nursing position an open records request for information obtained as a result of specific reference checks performed by the district. You contend that the requested information may be withheld pursuant to section 3(a)(11) of the Open Records Act. Although you have submitted to this office for review other information, this ruling addresses only the applicability of section 3(a)(11) to the requested information.

Section 3(a)(11) of the act protects advice, opinion, or recommendation intended for use in the deliberative process. Open Records Decision No. 538 (1990). In Open Records Decision No. 429 (1985) at 5, this office indicated that information protected by section 3(a)(11) must be prepared by a person or entity with an official reason or duty to provide the information in question. *See also* Open Records Decision Nos. 283, 273 (1981). In this regard, section 3(a)(11) protects solicited opinions of references that the district has contacted during the applicant's background check. *See* Open Records Decision No. 466 (1987) (copy enclosed).

Section 3(a)(11) does not, however, protect facts and written observation of facts and events that are severable from advice, opinions, and recommendation. Open Records Decision No. 450 (1986). We have marked in yellow those portions

of the requested information that you may withhold pursuant to section 3(a)(11).
The unmarked portions 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 OR91-449.

Yours very truly,



Celeste A. Baker
Assistant Attorney General
Opinion Committee

CAB/RWP/lcd

Ref.: ID# 12288

Enclosures: Open Records Decision No. 466
Marked documents

cc: Mr. Tom Stemmell
P. O. Drawer 2058
Pecos, Texas 79772
(w/o enclosures)