



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 10, 1991

Mr. Iris J. Jones
City Attorney
City of Austin
P.O. Box 1088
Austin, Texas 78767-8828

OR91-494

Dear Ms. Jones:

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# 13370.

The Austin City Manager has received a request for information relating to the Austin City Council. Specifically, the request includes:

1. Any and all calendars or other records of each member of the City Council for dates beginning May 25, 1991 through September 1991 showing (a) time and/or duration of meetings, (b) name(s) of person(s) present or to be present at the scheduled meeting, and (c) any notes or records concerning the subject matter of such meetings. This request is made as to all such calendars or records documenting any meetings with council members at which City of Austin business or policy was or will be discussed.
2. Any and all records of phone conversations of each council member for all telephone calls for which records of any kind were kept and for all such calls in which any matter of City of Austin business or policy was or will be discussed.

3. Any and all written correspondence to or from one or more members of council relating to the City of Austin's consideration of a watershed ordinance to protect Barton Springs or relating to one or more road, utility, or private development projects located in the Barton Springs recharge and/or contributing zones.

You assert that the request includes information which may as yet not exist. A governmental body need not comply with a request for information prepared after the date of the request or inform the requestor subsequently when that information does come into existence. Open Records Decision No. 452 (1986). With respect to information presently in the city's possession, you claim exception from required public disclosure under sections 3(a)(1), 3(a)(9), and 3(a)(11) of the Open Records Act.

You claim that some of the requested information is excepted from required public disclosure by common-law privacy interests under sections 3(a)(1) and 3(a)(9). The common-law privacy test for sections 3(a)(1) and 3(a)(9) are the same. See Open Records Decision No. 506 (1988). In *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977), the Texas Supreme Court ruled that common law privacy excepts only "information contain[ing] highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person," provided "the information is not of legitimate concern to the public." Where important public figures are involved, a legitimate public concern may overcome any right of common-law privacy. See Open Records Decision No. 455 (1987). The phone memo digests and the calendars include, almost exclusively, information relating to

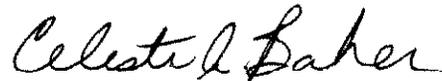
the discharge of official duties of city council members. None of the marked information is "intimate" or "embarrassing", and all of it is of legitimate concern to the public. Accordingly, the phone memo registers and the calendars may not be withheld from required public disclosure under sections 3(a)(1) and 3(a)(9) and must be disclosed.

Information relating to Mr. Cline's application to serve on the City Planning Commission is the kind of information held to be public in Open Records Decision 455, which held that applicants' educational training; names and addresses of former employers; dates of employment; kind of work, salary, and reasons for leaving; names, occupations, address and phone numbers of character references; job performances or abilities; and names of friends or relatives employed by the governmental body are not protected by common-law privacy under section 3(a)(1). *See also* Open Records Decision No. 257 (1980) (the public has a strong interest in being apprised of the names of persons being considered for important public positions.) Accordingly, the resume, application form, and letter must be disclosed.

Finally, you claim that some of the requested information is excepted from required public disclosure by section 3(a)(11). Section 3(a)(11) excepts memoranda and letters, but only to the extent that they contain advice, opinion, or recommendation intended for use in the entity's policy-making or deliberative process. Open Records Decision No. 462 (1987). None of the information submitted to us for review includes advice, opinion, or recommendation. Accordingly, you may not withhold any of the information from required public disclosure under 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 OR91-494.

Yours very truly,



Celeste A. Baker
Assistant Attorney General
Opinion Committee

CAB/GK/lcd

Enclosures: Open Records Decision Nos. 455, 506

Ref.: ID#s 13370, 13375, 13593, 13621

cc: Mr. William G. Bunch
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