



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 11, 1992

Mr. Burton F. Raiford
Interim Commissioner
Texas Department of Human Services
P. O. Box 149030
Austin, Texas 78714-9030

OR92-328

Dear Mr. Raiford:

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# 15799.

The Texas Department of Human Services received an open records request for

[t]he selection package for Job Announcement #50-720-92-001, Staff Development Specialist II. Include the applications, resumes, and performance evaluations for all people who were interviewed. Also include interview notes, exercises used, and any other documents used to rate the applicants and select the employees.

You state that you do not object to the release of most of the requested information. You seek to withhold pursuant to section 3(a)(11) portions of the "evaluation part of the Forms 4040" and the interviewers' handwritten notes that were taken during the applicants' interviews. You also indicate that you wish to withhold records reflecting "exercises" the applicants performed during the interview process.

Section 3(a)(11) of the act protects from required public disclosure interagency and intra-agency memoranda and letters, but only to the extent that they contain advice, opinion, or recommendation intended for use in the deliberative process. Open Records Decision No. 538 (1990). 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). If, however, the factual information is so inextricably intertwined with material involving advice, opinion, or recommendation as to make separation of the factual data impractical, the factual information may also be withheld. Open Records Decision No. 313 (1982).

We have reviewed the information contained in the columns entitled "Actual Achievements" and "Rating Code" of the Form 4040 and agree that any factual information contained therein is inextricably intertwined with the evaluator's subjective opinions of the applicant; the information in these columns may therefore be withheld in its entirety. We also agree that the other information you have marked on the Form 4040 comes under the protection of section 3(a)(11) and thus may also be withheld. However, most of the information you marked on the Form 19-00 contains facts which are not excepted by section 3(a)(11). We have marked the documents accordingly.

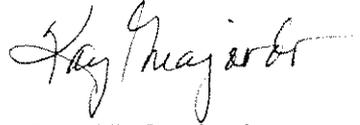
The forms entitled "Interview Feedback/Observations" consist of interviewers' handwritten notes that were taken during the applicants' interviews. These notes primarily reflect the applicant's responses and comments during the interview. As such, this information constitutes the interviewers' objective recording of factual events and thus may not be withheld pursuant to section 3(a)(11). Some of the forms, however, do contain the interviewers' subjective comments written either in the margins or at the end of the forms. We have marked a representative sample of the comments that the department may withhold pursuant to section 3(a)(11); the remaining portions of this form must, however, be released.

Finally, although you have indicated that exercise training materials are excepted from required public disclosure, you have not explained how section 3(a)(11) or any other of the act's exceptions apply to these records. Accordingly, the department must release these records. *See* Attorney General Opinion H-436 (1974) (burden is on custodian of records to prove records are excepted from required public disclosure).

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 OR92-328.

Yours very truly,



Kay H. Guajardo
Assistant Attorney General
Opinion Committee

KHG/RWP/lmm

Ref.: ID# 15799
ID# 15875

Enclosures: Marked documents

cc: Ms. Marianne McDonald
Texas Department of Human Services
P. O. Box 149030
Austin, Texas 78714-9030
(w/o enclosures)