



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 17, 1992

Mr. Joe Darnall
General Counsel
Texas Alcoholic Beverage Commission
P. O. Box 13127
Austin, Texas 78711-3127

OR92-406

Dear Mr. Darnall:

The Texas Alcoholic Beverage Commission (TABC) asks whether certain information concerning an application for employment as a peace officer is subject to required public disclosure under the Texas Open Records Act, V.T.C.S. article 6252-17a. Your request was assigned ID# 16228.

TABC received a request from Carlos Gene Benavides, III for all information his prior employer, Southern Pacific Railway, provided to TABC, and the name of the person who furnished the information to TABC. The TABC has furnished for our review documents including: a TABC memorandum captioned "Pre-employment investigation - Carlos Gene Benavides, III" dated April 4, 1991 (Exhibits 1-2); a TABC memorandum dated March 28, 1991, describing the results of interviews with Benavides' references (Exhibit 3); and a completed form dated March 26, 1991, describing the results of an interview with one of Benavides' references. The TABC claims that this information is excepted from required public disclosure by Open Records Act sections 3(a)(8) and 3(a)(11).

Open Records Act section 3(a) states that all information in the possession of a governmental body is public information, with the following relevant exceptions:

(8) records of law enforcement agencies and prosecutors that deal with the detection, investigation, and prosecution of crime and the internal records and notations of such law enforcement agencies and prosecutors which are maintained for internal use in matters relating to law enforcement and prosecution; [and]

....

(11) inter-agency or intra-agency memorandums or letters which would not be available by law to a party in litigation with the agency.

You contend that the records in their entirety should be deemed excepted pursuant to section 3(a)(8) because the confidentiality of these records furthers law enforcement efforts. Section 3(a)(8) applies only where the state demonstrates on a particularized case-by-case basis that release of the records would undermine a legitimate law enforcement concern. *See* Open Records Decision Nos. 444, 434, (1986), 409 (1984). Nebulous or speculative concerns are not sufficient to invoke 3(a)(8). *See* Open Records Decision No. 582 (1990). You have failed to identify a particularized law enforcement interest that would be jeopardized by release of the records at issue; thus we conclude that 3(a)(8) does not apply.

Section 3(a)(11) excepts from required public disclosure advice, opinion, or recommendation on policy or deliberative matter. *See* Open Records Decision Nos. 582, 574, 565, 563 (1990). Severable factual information is not excepted by section 3(a)(11). *Id.*

Exhibits 1 and 2 are the results of Benavides' employment interview and reflect the interviewer's advice, recommendation, and opinion. The recommendation of the interviewer may be withheld pursuant to section 3(a)(11); however the severable factual information on Exhibits 1 and 2 should be released to the requestor.

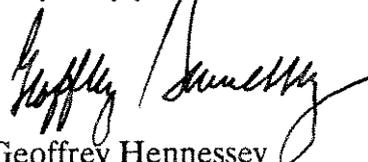
Exhibits 3 and 4 describe an interview with a representative of Benavides' former employer Southern Pacific. You claim that this information should be withheld pursuant to section 3(a)(11). In Open Records Decision No. 466, at 3-4 (1987), this office held that letters of recommendation written by faculty members concerning a probationary faculty member at a state university were excepted pursuant to section 3(a)(11). This office ruled that section 3(a)(11) excepted from required public disclosure the advice, opinion, and recommendation of third-party references where the governmental body expressly requested the information for use in a deliberative process and the information was not available from another source. *Id.*

In the present case the interview of the former employer was solicited by the governmental body. This interview was intended to provide advice, opinion, and recommendation for the deliberative process. Accordingly, information reflecting advice, opinion, and recommendation of the former employer is excepted pursuant to section 3(a)(11). Because Exhibit 4 contains only opinion and recommendation, it may be withheld in its entirety. However, Exhibit 3 contains both fact (or factual allegations) and advice, opinion, and recommendation. Accordingly only the advice, opinion, and recommendation may be withheld; the severable factual allegations should be released to the requestor.

In summary, we conclude that: Exhibit 4 may be withheld in its entirety; Exhibits 1 through 3 should be released except for those portions reflecting advice, opinion, or recommendation of the agency or the references. Enclosed please find a copy of the documents you submitted for our review; those portions which we believe are excepted have been marked and may be redacted.

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 OR92-406.

Very truly yours,



Geoffrey Hennessey
Assistant Attorney General
Opinion Committee

GH/lmm

Ref.: ID# 16228

cc: Mr. Carlos Gene Benavides, III
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