



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 20, 1992

Mr. Richard D. Monroe
Associate General Counsel
Texas Department of Transportation
125 East 11th Street
Austin, Texas 78701-2483

OR92-418

Dear Mr. Monroe:

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# 16485.

You have received a request for "briefing books" delivered to members of the Texas Department of Transportation Commission (the "commission") prior to a June 24, 1992, commission meeting. Specifically, the requestor seeks "all staff reports, briefings and other materials prepared for commission members" for three agenda items. You have submitted to us for review the requested information, which includes staff recommendations, draft commission "Minute Orders," and accompanying maps. You claim that this information is excepted from required public disclosure by section 3(a)(11) of the Open Records Act.

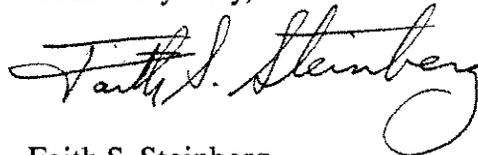
Section 3(a)(11) excepts from public disclosure "inter-agency or intra-agency memorandums or letters which would not be available by law to a party in litigation with the agency." It is well established that the purpose of section 3(a)(11) is to protect from public disclosure advice, opinion, and recommendation used in the *decisional process within an agency or between agencies*. The policy underlying the section 3(a)(11) exception is that public employees should be given significant latitude in conveying to fellow employees their subjective impressions regarding official business without the chilling effect on those views which the certainty of public disclosure would impose. Open Records Decision No. 308 (1982); *see also Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.--San Antonio 1982, writ ref'd n.r.e.); Attorney General Opinion H-436 (1974); Open Records Decision Nos. 538 (1990); 470 (1987). Where a record is genuinely a preliminary draft of a document that has been released or is intended for release in a final form, the draft

necessarily represents the advice, opinion, and recommendation of the drafter as to the form and content of the final document. Open Records Decision No. 559 (1990). Purely factual information, however, does not constitute advice, opinion, or recommendation and may not be withheld under section 3(a)(11). *Id.* at 2; *see also* Open Records Decision No. 450 (1986).

We have examined the documents submitted to us for review. Although the draft "Minute Orders" contain some factual information, we find that it is not severable from information that constitutes advice, opinion, or recommendation. Accordingly, the draft "Minute Orders" and accompanying maps may be withheld from required public disclosure in their entirety under section 3(a)(11) of the Open Records Act. In addition, we conclude that some of the information contained on other documents submitted to us for review constitutes advice, opinion, or recommendation. This information has been marked and may also be withheld under section 3(a)(11). The remainder of the information submitted to us for review 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 OR92-418.

Yours very truly,



Faith S. Steinberg
Assistant Attorney General
Opinion Committee

FS/GCK/lmm

Ref.: ID# 16485

cc: Mr. Scott Williams
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