Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 31, 1992

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

OR92-435

Dear Commissioner Raiford:

The Texas Department of Human Services ("DHS") asks whether certain information is subject to the Texas Open Records Act, V.T.C.S. article 6252-17a. Your request was assigned ID# 16241.

Ending in May 1992, DHS conducted an audit of Rio Grande Council of Governments Contract Number CW-03-020-62. A copy of the audit was furnished to the Rio Grande Council of Governments. The Rio Grande Council of Governments then filed an Open Records Act request with DHS for, *inter alia*, a list of all individuals contacted in the course of the audit and any notes or documents recording these interviews. DHS contends that this information is excepted from required public disclosure by Open Records Act section 3(a)(1) and 3(a)(11).

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

> (1) information deemed confidential by law, either Constitutional, statutory, or by judicial decision; [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 first claim that the identity of those persons interviewed may be withheld pursuant to the informer's privilege. The informer's privilege authorizes a

governmental body to withhold information which would reveal the identity of persons who report violations of the law to officials charged with enforcement of that law. Open Records Decision Nos. 462 (1987); 434 (1986). However this privilege does not apply where the information furnished does not reveal a crime or the violation of a specific law. Open Records Decision No. 515 (1988). The investigative notes do not include allegations of a crime or the violation of a specific law; therefore it is our conclusion that the informer's privilege does not apply.

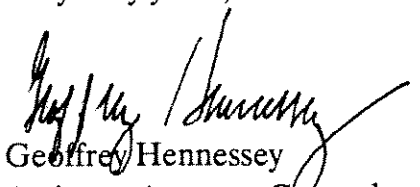
You also claim that the interview notes may be withheld pursuant to section 3(a)(11). Section 3(a)(11) excepts from required public disclosure advice, recommendation, and opinion on policy matters. Open Records Opinion Nos. 582; 574; 565; 563; 561; 556 (1990). Severable factual information is not excepted by section 3(a)(11). *Id.* If factual information is inextricably intertwined with information excepted by section 3(a)(11), it may be withheld. Open Records Decision Nos. 468; 466 (1987); 420 (1984). In the present case the interview notes reflect the advice, opinions, and recommendations of the interviewees; though these notes contain factual information, this factual information is inextricably intertwined with the advice, opinion and recommendations of the interviewees. Indeed, if the advice, opinion, and recommendation portions of the interview notes were redacted, the remaining portions of the notes would make little or no sense. Accordingly, it is our opinion that the interview notes are excepted in their entirety by section 3(a)(11).

In sum, it is our opinion that the identities of those persons interviewed in the preparation of the audit are not excepted pursuant to section 3(a)(1); however, it is our opinion that the DHS notes recording those interviews are excepted pursuant to 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 any questions about this ruling, please refer to OR92-435.

Very truly yours,



Geoffrey Hennessey
Assistant Attorney General
Opinion Committee

GH/lmm

Ref.: ID# 16241

cc: Mr. Justin R. Ormsby
Executive Director
Rio Grande Council of Governments
1014 North Stanton, Suite 100
El Paso, Texas 79908