



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

August 12, 1992

Mr. David M. Douglas  
Assistant Chief of Legal Services  
Texas Department of Public Safety  
5805 North Lamar Boulevard-Box 4087  
Austin, Texas 78773-0001

OR92-442

Dear Mr. Douglas:

The Texas Department of Public Safety (TDPS) asks whether certain information is subject to required public disclosure under the Texas Open Records Act, V.T.C.S. article 6252-17a. Your request was assigned ID# 15935.

Pursuant to the Open Records Act, TDPS has received a request for "a copy of any files in the possession or control of the Department of Public Safety concerning any reports or investigations of a putative quota involving traffic citations in or around Chambers County, Texas, within the calendar years 1990 and 1991." In a previous ruling, this office held that this information was excepted pursuant to Open Records Act section 3(a)(8) because of a pending investigation. See Open Records Ruling Letter No. 92-74 (Feb. 20, 1992). However, TDPS advises that the investigation has been concluded; accordingly, section 3(a)(8) no longer applies. TDPS originally claimed and still maintains that the requested documents are also excepted from public disclosure by Open Records Act sections 3(a)(1) and 3(a)(11). TDPS has submitted for our review an inter-office memorandum from TDPS Capt. Wayne Pullen to TDPS Region Commander William Maley dated Jan. 15, 1992 (Exhibit A) and an inter-office memorandum from TDPS legal counsel David Douglas to TDPS Chief John West dated April 1, 1992 (Exhibit B).

You claim that Exhibit B is excepted from required public disclosure under Open Records Act section 3(a)(1) pursuant to the attorney-client privilege. Although you raise the attorney-client privilege in the context of section 3(a)(1), we have previously ruled that this privilege arises under section 3(a)(7) which protects "matters in which the duty of . . . an attorney of a political subdivision, to his client, pursuant to the Rules and Canons of Ethics of the State Bar of Texas are prohibited

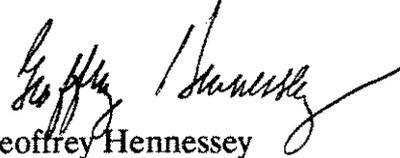
from disclosure." See Open Records Decision Nos. 589 (1991); 574 (1990). Correspondence between a governmental body and its attorney, if it contains legal advice or opinion, is excepted from disclosure by the attorney-client privilege. Open Records Decision Nos. 556 (1990); 462 (1987); 412 (1984); 380 (1983). Exhibit B concerns communications between TDPS and its counsel. These communications are within the attorney-client privilege and thus are excepted from required public disclosure by Open Records Act section 3(a)(7).

You contend that Exhibit A should be excepted pursuant to section 3(a)(11). Section 3(a)(11) protects from public disclosure advice, opinion, and recommendation on administrative matters, and is intended to encourage open and frank discussion regarding administrative action. Open Records Decision Nos. 582, 574, 565, 563 (1990). Severable factual information is not excepted by section 3(a)(11). *Id.* We conclude that the advice and recommendation as reflected on Exhibit A is excepted pursuant to section 3(a)(11).

In a brief furnished to this office, the requestor challenges this office's interpretation of section 3(a)(11). The requestor contends that in *Gilbreath v. TDPS*, No. 91-6202 (J. Davis) (Writ of Mandamus, Nov. 25, 1991), the 53rd Judicial District Court of Travis County held that "section 3(a)(11) only protects from disclosure those documents that would not be discoverable in a contemplated civil action between the party requesting the information and the agency from which the information has been requested." First, the court's mandamus order in *Gilbreath* states, without further explanation, that TDPS "ha[d] a clear duty to produce the information that Relator has requested," the Open Records Act notwithstanding. However, the court did not give reasons for its conclusion. The order does not, as the requestor in the present case suggests, state that the court rejected this office's longstanding interpretation of section 3(a)(11), nor did the court furnish an alternative interpretation of section 3(a)(11). Second, even if section 3(a)(11) only excepts information that would not be available in discovery in a civil action between the party requesting the information and the state agency as the requestor claims, the requested information would not be discoverable in a civil action between the requestor and TDPS. See Tex. R. Civ. P. 167(2) ("[discovery of documents] shall not extend to . . . communications between any party and his agents, representatives, or their employees, where made subsequent to the occurrence or transaction upon which the suit is based, and made in connection with the prosecution, investigation or defense of such claim or the circumstances out of which same has arisen").

In sum, we conclude that the requested information may be withheld pursuant to Open Records Act sections 3(a)(7) and 3(a)(11). Because 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 OR92-442.

Very truly yours,



Geoffrey Hennessey  
Assistant Attorney General  
Opinion Committee

GH/lmm

Ref.: ID# 15935  
ID# 16020  
ID# 16537

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