



Office of the Attorney General

State of Texas

September 28, 1992

DAN MORALES
ATTORNEY GENERAL

Mr. Charles E. Griffith, III
Deputy City Attorney
City of Austin
P. O. Box 1088
Austin, Texas 78767-8828

OR92-570

Dear Mr. Griffith:

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# 17128.

The City of Austin (the "city") has received a request for certain information relating to the selection of the city's new police chief. Specifically, the requestor seeks:

1. The name, occupation and background of all persons you, your staff or your agents interviewed for the job of chief of police to replace former Chief Jim Everett.
2. The name and occupation of all persons who applied for the position of Austin police chief during 1992.
3. All letters, memoranda or other documents pertaining to the process of selecting a new police chief for Austin.
4. All letters, memoranda or other documents pertaining to [the city manager], [her] staff or agents interviewing candidates for police chief, including any travel by [her], [her] staff, [her] agents or job candidates.

You advise us that you do not object to release of some of the requested information. You claim, however, that section 3(a)(11) of the Open Records Act exempts from required disclosure some of the requested information.

You have submitted to us for review recommendations that the city sought from three individuals who have knowledge of law enforcement professionals (Exhibit "B"), recommendations from members of the law enforcement community (Exhibit "C"), and the notes of city staff members concerning the selection of a new police chief (Exhibit "D"). You seek to withhold Exhibit "B" in its entirety and the marked portions of exhibits "C" and "D" under 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." 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).

As a threshold matter, we must determine whether the recommendations prepared by third parties fall within the section 3(a)(11) exception. Section 3(a)(11) applies to documents prepared by third-parties only in very limited circumstances. For example, in Open Records Decision No. 273 (1981), this office held that an advisory committee and its findings were within the section 3(a)(11) exception because the committee was a formal creation and acted as an official arm of the university. *See also* Open Records Decision No. 192 (1978). Section 3(a)(11) also may apply to documents outside consultants have prepared for an agency when the documents are prepared specifically for use in the agency's decision-making process; however, section 3(a)(11) does not apply to materials prepared by one outside the agency who has no official responsibility to do so, but who acts only as an interested party. *See, e.g.*, Open Records Decision Nos. 563 (1990); 470, 466, 462 (1987); 437 (1986); 429 (1985).

You advise us that the city sought the recommendations as a means of evaluating potential police chief candidates. You state that

[a]s part of the selection process, the City sought recommendations from three individuals who have extensive knowledge and experience in the national community of law enforcement . . . Recommendations were also sought from other prominent members of the law enforcement community

Having examined the documents submitted to us for review, we conclude that the persons providing the recommendations clearly did so as agents of the city and prepared the recommendations specifically for use in the city's decision-making process. We also conclude that Exhibit B in its entirety and the information marked in yellow constitutes advice, opinion, or recommendation; accordingly, section 3(a)(11) of the Open Records Act permits the city to withhold this information from required public disclosure. However, the city must release the remaining information.

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 OR92-570.

Yours very truly,



Kimberly K. Oltrogge
Assistant Attorney General
Opinion Committee

KKO/GCK/lmm

Enclosures: Submitted documents

Ref.: ID# 17128
ID# 17135

cc: Mr. Mike Todd, Reporter
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