



Office of the Attorney General
State of Texas

October 22, 1992

DAN MORALES
ATTORNEY GENERAL

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

OR92-611

Dear Mr. Griffith:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"). V.T.C.S. art. 6252-17a. Your request was assigned ID# 16525.

You explain that the City of Austin (the "city") has received a request for the document entitled the "South Texas Project Nuclear Fuel Procurement Program" (the "program plan").¹ You assert that the program plan as a whole or in large part is excepted from required public disclosure under the act by sections 3(a)(4), 3(a)(5), 3(a)(10), or 3(a)(11).

Pursuant to section 7(c) of the act, we notified Energy Resources International, Inc. ("ERI"), who prepared the program plan for the city and other owners of the South Texas Project ("STP"). In response, ERI asserts that significant portions of the program plan are excepted from required public disclosure by section 3(a)(10) of the act.

We turn first to the section 3(a)(11) exception. You asserted initially that the entire document could be withheld pursuant to section 3(a)(11). In response to our request to mark those parts of the document you considered within section 3(a)(11), you marked a significant portion of the program plan as subject to the section 3(a)(11) exception. You advise that the program plan was prepared by ERI at the

¹In conjunction with this request, this office received a letter from the Department of Energy. You advise that this letter is not relevant to the issues raised by the request for the program plan.

owners' direction to provide advice and recommendation to the owners for future procurement of nuclear fuel and related fuel services.

Section 3(a)(11) excepts from required public disclosure interagency and intra-agency memoranda and letters. The purpose of this exception is "to protect from disclosure advice and opinion on policy matters and to encourage open and frank discussion" within an agency concerning governmental decisions. *See* Attorney General Opinion H-436 (1974) at 2. Accordingly, section 3(a)(11) protects interagency and intra-agency advice, opinion and recommendation intended for use in a governmental body's deliberative process. Open Records Decision No. 547 (1990) at 1-2; Attorney General Opinion H-436 at 2. It also protects advice, opinion and recommendation provided by outside consultants acting on the behalf of the governmental body in an official capacity. Open Records Decision No. 462 (1987). Section 3(a)(11) does not, however, protect facts and written observations of facts if severable from the advice, opinion, and recommendation. Open Records Decision No. 574 at 2.

We have reviewed the marked portion to which you assert section 3(a)(11) applies and conclude that the information contained therein is either advice, opinion or recommendation with regard to future procurement of nuclear fuel and related services or facts not severable therefrom. Moreover, we conclude based on our review of the entire document that the remaining parts of the program plan may be withheld pursuant to section 3(a)(11) except for the unmarked material in the executive summary on ES-1. Given the clear and sole purpose of the document to provide long-term advice and the use therein of facts only to support such advice, we agree that all of the program plan except for the unmarked material on ES-1 may be withheld pursuant to section 3(a)(11)².

Since we resolve this matter under section 3(a)(11), we do not address the remaining exceptions raised by the city or ERI. Furthermore, since prior published open records decisions resolve your request, we are resolving this matter with this

²We note here that any copying of copyrighted material must be consistent with federal copyright law and that a governmental body is not required to furnish copies of such material. The public, however, may examine copies of copyrighted material and make copies unassisted by the state if the material is not excepted under Section 3(a) of the act. Attorney General Opinion JM-672 (1987); MW-307 (1981).

informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR92-611.

Yours very truly,



Celeste A. Baker
Assistant Attorney General
Opinion Committee

CAB/lmm

Ref.: ID#s 16525, 16542, 16591
ID#s 16751, 16886, 17041
ID#s 17414, 17501

Enclosure: Submitted documents

cc: Mr. Wilson P. Dizard, III
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