



Office of the Attorney General
State of Texas

August 2, 1993

DAN MORALES
ATTORNEY GENERAL

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

OR93-496

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# 20422.

The Texas Department of Transportation (the "department") has received a request for a copy of an "interoffice memorandum regarding TxDOT's use of Polyethylene Drainage Pipe." You have submitted the requested memorandum to us for review and claim that it is excepted from required public disclosure under section 3(a)(11) of the Open Records Act.

Section 3(a)(11) excepts from required 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." In Open Records Decision No. 615 (1993) (copy enclosed), this office reexamined the section 3(a)(11) exception and held that section 3(a)(11) excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the deliberative or policymaking processes of the governmental body at issue. Purely factual information, however, that is severable from the opinion portions of internal memoranda is not protected under section 3(a)(11). *Id.* at 6.

The memorandum submitted to us for review contains internal communications consisting of advice, recommendations, opinions, and other material reflecting the department's deliberative or policymaking processes with regard to the use of corrugated polyethylene pipe in the highway transportation industry. This information has been marked and may be withheld from required public disclosure under section 3(a)(11) of

the Open Records Act. The remaining information, however, is purely factual and must be made available to the requestor.

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 contact this office.

Yours very truly,



James E. Tourtelott
Assistant Attorney General
Open Government Section

JET/GCK/jmn

Enclosure: Open Records Decision No. 615

Ref.: ID# 20422

cc: Mr. Tim Toliver
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