



Office of the Attorney General
State of Texas

August 26, 1993

DAN MORALES
ATTORNEY GENERAL

Ms. Gretchen Kuehn Bohnert
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR93-547

Dear Ms. Bohnert:

The Houston Health Department and Mayor Bob Lanier received a request for several different categories of information and requested a decision of this office pursuant to section 7 of the Texas Open Records Act (the "act"), V.T.C.S. article 6252-17a. You agreed to disclose some of the requested information. You claimed that the remaining information is excepted from required public disclosure by sections 3(a)(1), 3(a)(6), 3(a)(7), and 3(a)(11). In Open Records Letter OR93-193 (1993), this office partially disposed of your request. However, because the decision in *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ) required reexamination of the section 3(a)(11) exception, we allowed you an additional 15 days to submit arguments in accordance with the *Gilbreath* decision. We now address your claim that information requested in item 4 is protected by section 3(a)(11) of the act.¹ We have assigned your request ID# 20258.

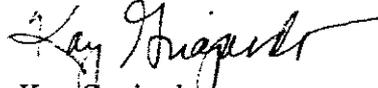
Section 3(a)(11) excepts from required public disclosure "inter-agency or intra-agency memorandums or letters which would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993) (copy enclosed), this office reexamined the section 3(a)(11) exception and 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.

¹You also claim that the information submitted to us for review is excepted from required public disclosure by section 3(a)(3) of the act. Absent a showing of compelling interest, a governmental body may not raise additional exceptions after the ten-day deadline set forth in section 7 of the act. Open Records Decision No. 515 (1988). In this instance, you have failed to assert section 3(a)(3) within the ten days and have not made a showing of compelling interest. Accordingly, the information submitted to us for review may not be withheld under section 3(a)(3) of the act.

The documents submitted to us for review contain internal communications consisting of advice, recommendations, opinions, and other material reflecting the city's deliberative or policymaking processes with regard to the proposed merger of the health services of Harris County with those of the City of Houston. We have marked the information that may be withheld under section 3(a)(11). The remaining information, however, is purely factual and must be released.

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,



Kay Guajardo
Assistant Attorney General
Opinion Committee

KHG/GCK/jmn

Ref.: ID# 20258

Enclosures: Open Records Decision No. 615

cc: Mr. Wayne Dolcefino
KTRK-TV
P.O. Box 13
Houston, Texas 77001
(w/o enclosures)