

LEGAL DEPARTMENT

JONATHAN GRAHAM
CITY ATTORNEY

TRUDI DILL
DEPUTY CITY ATTORNEY

MICHAEL PENKWITZ
ASSISTANT CITY ATTORNEY



1D# 1375
REP-GOY
COMMUNITY
PRIDE

ECONOMIC
VITALITY

QUALITY
OF LIFE

September 24, 1991

~~RQ-237~~

RQ-376

RECEIVED

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Opinion Committee

Mr. William Walker
Assistant Attorney General
Opinions Division
P. O. Box 12548
Austin, Texas 78711-2548

Re: OR91-382

Dear Mr. Walker:

A controversy has arisen in connection with your letter opinion of August 19, 1991, OR91-382. Enclosed as exhibits to this letter are copies of the following correspondence between Mrs. Mary Gerland and the City of Temple:

- A. Request dated June 12, 1991, from Mary Gerland, for copies of annual audited financial reports, including 1986-1990 management letters;
- B. Letter dated June 14, 1991, from Deputy City Attorney to Mary Gerland, notifying Mrs. Gerland of the City's intention to request an opinion from the Attorney General regarding a request identical to hers submitted by the Temple Daily Telegram on June 10, 1991;
- C. Request dated September 6, 1991, from Mary Gerland, for a copy of OR91-382 and a "censored" version of the 1986-1990 management letters;
- D. Letter dated September 11, 1991, from Deputy City Attorney to Mary Gerland, transmitting a copy of OR91-382 and declining to prepare a "censored" version of the materials previously furnished; and
- E. Letter dated September 20, 1991, from Mary Gerland to City Manager, requesting 1986-1990 management letters, in the form of "excised copies of the original documents, page by page," or in the alternative, requesting that the City seek an opinion from the Attorney General.

**ACCOMPANIED BY ENCLOSURES —
FILED SEPARATELY**

As explained to me by Mrs. Gerland, she wants to see the blank spaces which would be created, if the privileged portions of the 1986-1990 management letters were deleted by the process of making photocopies of photocopies, of the management letters which have been altered by physically cutting out or covering up the advisory portions of the letters.

CITY'S POSITION

The City questions whether the instant request is a request for "information" under the Open Records Act. The Attorney General recently issued Opinion No. DM-41 in response to a request of the Secretary of State for an open records decision. A requestor had asked that *information be provided in the form of a "print-image" nine track tape*. The Honorable John Hannah, Jr. asked if the information must be provided in the form requested. The Attorney General responded pursuant to chapter 402 of the Government Code, instead of issuing an open records decision, as the public availability of the requested information was not disputed. The Attorney General reasoned that a request for public information in an additional medium or format is not a request for "information" independently subject to the Open Records Act.

The City contends that Mrs. Gerland's request of September 20, 1991, likewise is not a request for "information" which must be submitted to the Attorney General for a determination. However, as we find no previous determination concerning the particular format requested, if necessary, you may regard this letter as a request for a determination. If the request is deemed to be one for "information" subject to the Open Records Act, then the City claims exemption from disclosure under Section 3(a)(11).

The Attorneys General have held in Open Records Decisions No. 298 (1981) and No. 313 (1982) that when factual information included in a inter-agency or intra-agency memorandum is so inextricably intertwined with material involving advice, opinion, or recommendation as to make *separation* of the factual data impractical, that information may be withheld under Section 3(a)(11) of the Open Records Act, article 6252-17a V.T.C.S. Section 3(a)(11) does not protect facts and written observations of facts and events that are *severable* from advice, opinion, and recommendation. Open Records Decision No. 459 (1986). No decisions specify a particular method for severing a memorandum that the Attorney General has determined is severable.

Enclosed with this request is a complete copy of the materials furnished to Mrs. Gerland, the Temple Daily Telegram, and other members of the public. One letter was almost entirely factual, so it was practical to photocopy the letter in its entirety, except for blocking out two whole, advisory paragraphs on the first page. In all of the other letters, the factual and advisory portions were intermingled. Sentences had to be separated from paragraphs, phrases from sentences and even words from phrases. Cutting, pasting or painting would have been impractical and unduly burdensome.

The portions of the requested management letters which you determined to be public information were typed—verbatim. No information which you required to be released was

released in the form of a synopsis (a condensed statement or outline). To preserve the context of the released portions of the documents as much as possible, ellipses were used to indicate all omissions of text. Spaced periods (. . .) were used to show omission of words, phrases and sentences; centered asterisks (* * *) were used to show omission of one or more paragraphs.

The released, factual information is quite intelligible standing alone. That is why the City concurs with your decision that the factual portions of the letters are severable and separable from the advisory portions. Revealing the number of lines and spaces that the privileged portions occupied in the original letters will not make the released portions any more understandable.

The City's position is that the portions of the letter which you have determined are protected from disclosure, should be protected from disclosure. We find no language in the Open Records Act suggesting that the public has a right to measure or otherwise quantify the text of information excepted from disclosure under any of the statutory exceptions, including Section 3(a)(11).

Thank you for your assistance in this matter.

Sincerely,



Trudi Dill
Deputy City Attorney

Enclosures

- c Mrs. Mary Gerland, President
Bell County Taxpayers Association
2714 Inwood
Temple, Texas 76502