

Academic Component Institutions:
The University of Texas at Arlington
The University of Texas at Austin
The University of Texas at Brownsville
The University of Texas at Dallas
The University of Texas at El Paso
The University of Texas-Pan American
The University of Texas of the Permian Basin
The University of Texas at San Antonio
The University of Texas Institute of Texan Cultures at San Antonio
The University of Texas at Tyler



Health Component Institutions:
The University of Texas Southwestern Medical Center at Dallas
The University of Texas Medical Branch at Galveston
The University of Texas Health Science Center at Houston
The University of Texas Health Science Center at San Antonio
The University of Texas M.D. Anderson Cancer Center
The University of Texas Health Center at Tyler

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THE UNIVERSITY OF TEXAS SYSTEM
Office of General Counsel

Opinion Committee

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April 26, 1993

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The Honorable Dan Morales
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Austin, Texas 78711

FILE # ~~MB 1993/93~~
I.D.# 1997/
RQ-589

RE: Request For Open Records Act Opinion; University of Texas at Arlington; Lisa Black

Dear General Morales:

The University of Texas at Arlington is in receipt of the enclosed request from Lisa Black of the Fort Worth Star-Telegram for a copy of a consultant's report. I am advised that the report was authorized by The University of Texas at Arlington to study allegations of discrimination at that institution. The report contains confidential interviews, "findings" which are really the opinions of the consultant, as well as advice, opinions and recommendations to the University for future action.

For many years, the law was settled with regard to the application of the Section 3(a)(11) exception of the Texas Open Records Act to a request of this nature. Austin v. City of San Antonio, 630 S.W.2d 391, (Civ. App. - San Antonio, 1982); Kneeland v. N.C.A.A., 650 F.Supp. 1076 (W.D.Tex. 1986).

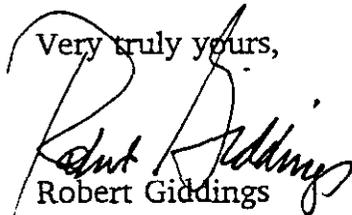
Section 3(a)(11) is designed to protect from disclosure advice and opinions on policy matters and to encourage open and frank discussions within the agency in connection with its decision-making process, as well as between subordinate and chief concerning administrative action. When advice, opinions, and recommendations appear in the same document with objective factual dates, the factual information should be severed and disclosed. Kneeland, 650 F.Supp. 1076, 1088. Austin, 630 S.W.2d 391, 394.

The recent decision by the Austin Court of Appeals in Texas Department of Public Safety v. Gilbreath, No. 3-92-024-CV, dated November 25, 1992, appears to have changed the law with regard to the meaning of Section 3(a)(11). Although the Court in Gilbreath recites the language from Austin, that the exception protects advice and opinions on policy matters

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and encourages frank and open discussion within the agency in connection with its decision-making process, the Court concludes that 3(a)(11) has no meaning apart from 3(a)(1), stating that 3(a)(11) exempts only those documents normally privileged in the civil discovery context, which would already be covered by 3(a)(1). In view of the recent opinion in Gilbreath, the University of Texas requests a ruling on the issue of whether the enclosed consultant's report to The University of Texas at Arlington may be withheld from disclosure pursuant to the provisions of Section 3(a)(11) of the Texas Open Records Act, Article 6252-17a, V.T.C.S.

Very truly yours,



Robert Giddings

JRG:
Enclosure

xc: Mr. J.D. Wetsel
Mr. Ray Farabee
Mr. W.O. Shultz II