



City of Austin

Founded by Congress, Republic of Texas, 1839

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VIA FACSIMILE TRANSMISSION
463-2092

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FILE # M-242

I.D.# 242

January 24, 1994

Honorable Dan Morales
Texas Attorney General
Attn: Opinion Committee, Open Government Section
Price Daniel Building, 7th Floor
209 West 14th Street
Austin, Texas 78701

RE: Open Records Request

RO-716

Dear General Morales:

Pursuant to Section 552.301 of the Texas Open Records Act, the City of Austin hereby requests a determination concerning whether the enclosed request for information, attached as Exhibit A, falls within the exceptions contained in Sections 552.106 and 552.111 of the Act.

The request seeks, among other things, "all documentation on final applicants for the position of Chief of Police including any correspondence between the City and these final applicants. Also to be included are notes by City Personnel conducting interview or any other participant of these interviews acting on behalf of the City of Austin."

In 1992, the City of Austin received a request for the same records and, on August 24, 1992, requested an opinion from your office regarding the disclosure of these records. In that request, the City asserted that some portions of the documents were excepted from disclosure under Section 3(a)(1), now Section 552.111 of the Open Records Act. Attached to that request for opinion were documents summarizing the recommendations of individuals with extensive knowledge and experience in the national community of law enforcement professionals (attached as Exhibit B); documents indicating the recommendations of other prominent members of the law enforcement community (attached as

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Exhibit C); and documents which contained handwritten notes consisting of advice, opinions and/or recommendations of City staff concerning potential candidates (attached as Exhibit D).

In response to the City's August 24, 1992 request for opinion, you issued OR92-570 dated September 28, 1992, a copy of which is attached. In that letter opinion, you concluded that all of Exhibit B and those portions of Exhibits C and D which were marked in yellow constituted advice, opinion or recommendation and could be withheld from disclosure under Section 3(a)(11) of the Open Records Act. The copies of Exhibits B, C and D attached to this request, are the same exhibits submitted with the 1992 request and reflect the original yellow highlighting.

Since OR92-570 was issued, your office has issued ORD-615 (1993) addressing the inter-agency and intra-agency memorandum exception in Section 3(a)(11), now Section 552.111, of the Act. In light of ORD-615, the City of Austin requests that you review these records again and determine whether the City may withhold Exhibit B and the information marked in yellow in Exhibits C and D, from disclosure.

The advice, opinion and recommendation contained in Exhibit B and the highlighted portions of Exhibits C and D were related to the policymaking functions of the governmental body. Selection of the Chief of Police is not a routine internal personnel matter; it requires decisions by the City Manager and the City Council regarding law enforcement policy for the City. Furthermore, by law, selection of the Chief of Police requires legislative action. Local Government Code Section 143.013. We submit that Exhibit B and the highlighted portions of Exhibits C and D are protected from disclosure by Sections 552.106 and 552.111.

If you have any questions or need any further information, please contact me or Anita Turner at 499-2421.

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Because this request is being faxed to you, the original of this request and the attached records will be mailed under separate cover.

Respectfully submitted,

Charles E. Griffith, III

Charles E. Griffith, III
Deputy City Attorney

CEG:rs\11276

cc: Diana L. Granger, City Attorney
Sally Henly, Supervising Attorney
Anita Turner, Assistant City Attorney