



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

**JOHN L. HILL
ATTORNEY GENERAL**

July 20, 1977

The Honorable Lorene Rogers
President
The University of Texas
Austin, Texas 78701

Open Records Decision No.168

Re: Whether letters from
Director of Center for Energy
Studies to certain employees
and memorandum concerning a
reclassification of an em-
ployee are public.

Dear Dr. Rogers:

You have requested our decision pursuant to section 7 of the Open Records Act as to whether certain letters and an intra-office memorandum regarding the appointment and promotion of employees are excepted from required public disclosure under the "personnel records" exception, section 3(a)(2), or under the intra-agency memorandum exception, section 3(a)(11).

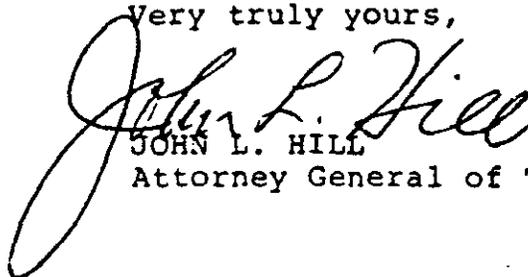
A former secretarial employee of the Center for Energy Studies has requested letters written by the Director of the Center to specified employees on the subject of "rewards for their hard work since the layoff in Energy Studies." You have supplied us with the information requested. The four letters are brief, innocuous, commendatory letters of appreciation to hard-working employees with a general statement of intent to recommend unspecified improvements in their positions at some unspecified time in the future.

Section 3(a)(2) of the Open Records Act excepts from required public disclosure "information in personnel files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. . . ." The first inquiry as to the applicability of this exception is whether disclosure would constitute an invasion of privacy, and if so, how serious an invasion. Getman v. National Labor Relations Board, 450 F.2d 670, 674 (D.C. Cir. 1971). See Department of the Air Force v. Rose, 425 U.S. 352, 372-380 (1976); Campbell v. United States Civil Service, 539 F.2d 58, 61 (10th Cir. 1976); Columbia Packing Co., Inc. v. Department of Agriculture, 417 F.Supp. 651, 654 (D. Mass. 1976).

This exception was designed to protect "intimate details" of a "highly personal" nature. Ditlow v. Shultz, 517 F.2d 166, 169-170 (D.C. Cir. 1975); Rural Housing Alliance v. Department of Agriculture, 498 F.2d 73, 77 (D.C. Cir. 1974); Robles v. Environmental Protection Agency, 484 F.2d 843, 845 (4th Cir. 1973); Getman v. National Labor Relations Board, *supra* at 675. The Texas Supreme Court has said that in order for information to be protected by the tort right of privacy under section 3(a)(1) as information deemed confidential by law, the information must "contain highly intimate or embarrassing facts about a person's private affairs, such that its publication would be highly objectionable to a person of ordinary sensibilities." Industrial Foundation of the South v. Texas Industrial Accident Board, 540 S.W.2d 668, 683 (Tex. 1976). Information in a personnel file must involve some fact or detail of this nature in order to bring the applicability of the section 3(a)(2) exception into question. There is simply nothing in these letters a reasonable person could regard as private such that its release would be objectionable. Although a favorable evaluation of an employee by a superior could in an appropriate case be excepted from disclosure under section 3(a)(2), the information must be more personal and detailed than this is in order to justify a claim of the exception. The letters are not excepted from required public disclosure under section 3(a)(2).

The requestor has also asked for a memorandum requesting a reclassification of a named employee from Senior Secretary to Administrative Secretary. It is the University's position that the memorandum is excepted as an intra-agency memorandum under section 3(a)(11) and also as 3(a)(2) information. Those portions of the memorandum making evaluations and recommendations as to promotion of an individual are ordinarily excepted from required public disclosure. Open Records Decision Nos. 133, 129 (1976); 117, 115, 110, 102, 90, 86, 82, 81, 71, 68 (1975); 55, 20 (1974). The factual portions of the memorandum which are not related to an identifiable individual are public and must be disclosed. Attorney General Opinion H-436 (1974); Open Records Decision Nos. 160 (1977); 149, 128 (1976); 81 (1975). We have indicated those portions of the memorandum which may be withheld on a copy which we enclose.

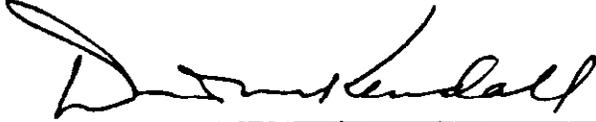
Very truly yours,



JOHN L. HILL

Attorney General of Texas

APPROVED:



DAVID M. KENDALL, First Assistant



C. ROBERT HEATH, Chairman
Opinion Committee

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