



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

**JOHN L. HILL
ATTORNEY GENERAL**

September 28, 1977

Honorable C. C. Nolen, President
North Texas State University
Denton, Texas 76203

Open Records Decision No.178

Re: Whether audit records
of a college department are
public under the Open Records
Act.

Dear President Nolen:

You have received a request under the Open Records Act, V.T.C.S. art. 6252-17a, for the report of a 1976 audit of the Physics Department of North Texas State University. You state that a comprehensive audit of the department was not made; however, you do have memoranda reporting audits of certain expenditures by the Physics Department. These are as follows:

1. memorandum from assistant internal auditor to internal auditor dated May 9, 1975.
2. memorandum from the vice-president for fiscal affairs to the president, dated April 6, 1976.
3. memorandum from internal auditor to vice-president for fiscal affairs dated April 7, 1976.
4. memorandum from assistant internal auditor to internal auditor, dated April 7, 1976.

Items 1, 3, and 4 are reports of the auditors' observations and conclusions. Item 2 is a transmittal memo which accompanied the May 9, 1975, report and included the writer's observations about personnel matters. You inform us that these documents have been turned over to various law enforcement authorities for use in their investigations. You believe these memoranda are excepted from disclosure by sections 3(a)(3) and 3(a)(11) of article 6252-17a, V.T.C.S.

Section 3(a)(3) of the Open Records Act excepts

information relating to litigation of a
criminal or civil nature and settlement

negotiations, to which the state or political subdivision is, or may be, a party, or to which an officer or employee of the state or political subdivision, as a consequence of his office or employment, is or may be a party, that the attorney general or the respective attorneys of the various political subdivisions has determined should be withheld from public inspection.

We have been informed that no litigation relative to these documents is pending. You have not indicated that any is contemplated. The mere possibility of litigation is not sufficient to warrant the withholding of information. Open Records Decision Nos. 80 (1975); 29, 27 (1974); see Open Records Decision No. 93 (1975). We do not believe section 3(a)(3) is applicable to the memoranda you have submitted to us.

Section 3(a)(11) of the Open Records Act excepts

inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than one in litigation with the agency.

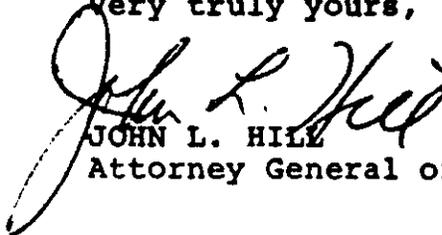
The exception protects recommendations and opinion on policy matters. Attorney General Opinion H-436 (1974). Factual information contained in inter-agency and intra-agency memos which can be severed from advice and opinion must be disclosed. Id.; see Environmental Protection Agency v. Mink, 410 U.S. 73 (1973); General Services Administration v. Benson, 415 F.2d 878 (9th Cir. 1969). Items 1, 3, and 4 consist entirely of factual material reporting on the storage of supplies and the handling of funds. Like the audit report required to be disclosed by Open Records Decision No. 160 (1977), these documents make no suggestions concerning the formulation of policy by the University. To the extent they relate to policy at all, they suggest methods for the practical implementation of what appear to be established policies.

Items 3 and 4 name some employees of the Physics Department and state some of their responsibilities. There is no evaluation of an employee's performance, or other information that would come within the 3(a)(2) exception for "information in personnel files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. . . ." See Open Records Decision Nos. 165 (1977); 142, 139 (1976).

An individual student is named on page 2 of item 3. The reference is not clear, but it may concern the student's attendance record. If so, as information about the student's relationship to the educational institution, it would be within the 3(a)(14) exemption for student records. Attorney General Opinion H-447 (1974). In our opinion, deletion of the student's name from the sentence will satisfy the requirements of 3(a)(14). See Open Records Decision No. 165 (1977). With this one exception, items 1, 3, and 4 are open records.

Paragraph four of item 2 reflects charges made against an identifiable employee. Such information is excepted from disclosure by section 3(a)(2) of the Open Records Act. Open Records Decision Nos. 117, 81 (1975). We believe that deletion of the identifying details relating to the employee will satisfy the requirements of 3(a)(2). We have marked these deletions on the enclosed copy of the memorandum. The remainder is open to the public.

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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