



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

January 12, 1989

W.O. Shultz, II
General Attorney and
Associate General Counsel
University of Texas System
201 West 7th Street
Austin, Texas 78701

Dear Mr. Shultz:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 5288; this decision is OR89-018.

Under the Open Records Act, all information held by governmental bodies is open unless the information falls within one of the act's specific exceptions to disclosure. The act places on the custodian of records the burden of proving that records are excepted from public disclosure. If a governmental body fails to claim an exception, the exception is ordinarily waived unless the information is deemed confidential under the act. See Attorney General Opinion JM-672 (1987). The act does not require this office to raise and consider exceptions that you have not raised.

You ask whether sections 3(a)(1) and 3(a)(14) protect the names of student athletes who have been tested for the use of controlled substances and the names of those who have tested positive. Sections 3(a)(14) and 14(e) protect student records. In Open Records Decision No. 447 (1986), this office determined that section 14(e) protects information about identifiable student athletes in correspondence from the University of Texas Athletic Department to the National Collegiate Athletic Association (NCAA). In Open Records Decision No. 469 (1987), this office reached a similar conclusion with regard to the names of student athletes who are listed in athletic department records as having improperly identified designees for their complimentary admissions to games. Informal decision OR88-171 (1988) relied on Open Records Decision No. 447, in part, to conclude that information pertaining to the drug testing of

W.O. Shultz, II
January 12, 1989
Page 2

student athletes is protected when specific student athletes can be identified in the information.

Based on these decisions, you should withhold the information at issue; it falls within sections 3(a)(14) and 14(e). Because these sections resolve your request, this decision does not address your question about section 3(a)(1).

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR89-018.

Yours very truly,

Open Government Section
of the Opinion Committee 

Open Government Section
of the Opinion Committee
Prepared by Jennifer S. Riggs
Chief, Open Government Section

JSR/bra

Encl. ORD-447
 ORD-469
 OR88-171

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Ref. ID 5288