



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

January 13, 1989

Mr. Dereef Greene
El Paso Community College
P.O. Box 20500
El Paso, Texas 79998

Dear Mr. Greene:

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# 4960; this decision is OR89-021.

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 received a request for a computer list or any other list of all full-time Community College employees whose employment has been terminated since 1984, a computer list or other list of all college employees whose yearly contracts were not renewed since 1984, and inspection of "said files." Your letter to this office of November 14, 1988 indicated that you construed this request as one for access to all of the files that might contain the information requested as well as documents regarding contract non-renewal and dismissal procedures.

The El Paso Community College has misconstrued the request. The request letter asks for a computer search to produce lists containing the requested information i.e., the names of employees and the date of termination or non-renewal. This was confirmed in a telephone conversation

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between the requestor and this office on January 3, 1989. A request for a computer search involves different issues from a review of documents requested under the Open Records Act. The documents you submitted are being returned to you.

Although the act does not require a governmental body to prepare new information, some compilation of information may be required under the act. Attorney General Opinion JM-672 (1987). It is well established that the act does not require a governmental body to prepare new information. Open Records Decision No. 342 (1982). For example, in Open Records Decision No. 452 (1986), the attorney general indicated that a school district need not comply with a request for a survey of the location, in various schools, of desks painted with lead paint when the school district has not made a survey of the location of the desks. On the other hand, in Attorney General Opinion JM-672, the attorney general indicated that a minimal computer search may be required to locate existing information stored in computers. Whether certain programming constitutes the creation of new material, and is therefore not required, must be determined on a case-by-case basis. Attorney General Opinion JM-672.

You have raised arguments in favor of nondisclosure of files, but do not address the issue of a computer search. You do not state whether or not a list of the requested information exists, or is easy to prepare through a computer search or in some other fashion. Resolution of these issues is important here because the information requested clearly is public.

Although the information requested may be contained in personnel files, it is not exempt from disclosure unless it meets the test for an invasion of privacy under section 3(a)(1) of the act. Hubert v. Harte-Hanks Texas Newspapers, Inc. 652 S.W.2d 546, 550 (Tex. App. - Austin 1983, writ. ref'd n.r.e.). The information requested here is simply the name of the employee and the date of termination or non-renewal. These basic facts do not meet any of the tests for invasion of privacy under section 3(a)(1).

Nor is the information exempt from disclosure under section 3(a)(11). The employees' names and dates of termination are facts. Facts do not constitute advice, opinion, or recommendation and cannot be withheld under section 3(a)(11). Open Records Decision Nos. 450 (1986); 308 (1982). Severable factual information is not excepted from disclosure. Open Records Decision Nos. 231, 230, 225 (1979); 213 (1978).

The litigation exception embodied in section 3(a)(3) is meant to protect the litigation interests of an agency that is about to be or is involved in litigation. To claim this exception a governmental body must show that release of the information would adversely affect the government's legal interests or litigation strategy. Open Records Decision No. 478 (1987). If release of the information would not affect the government's legal interests, the information may not be withheld under section 3(a)(3). Open Records Decision No. 349 (1982). Section 3(a)(3) does not apply if the adverse party has access to the document. Open Records Decision No. 349.

Undoubtedly, the employee who has filed an EEOC complaint knows the date she was terminated. Release of her name and the date she was terminated cannot logically be said to have any impact on the college's litigation strategy or legal interests. Section 3(a)(3) does not apply to the information requested.

Because the information requested is public, the only issues to be resolved regarding this request are those pertaining to the existence of the requested list and the college's ability to make any necessary computer search. If the college is not able to perform the computer search, please submit a letter outlining the college's position and supporting arguments within 3 working days of the receipt of this letter.

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 OR89-021.

Yours very truly,

*Open Government Section
of the Opinion Committee* 

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of the Opinion Committee
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PB/bra

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Encl.: (submitted documents)