



**THE ATTORNEY GENERAL  
OF TEXAS**

**JIM MATTOX  
ATTORNEY GENERAL**

July 17, 1989

Ms. Betty DeWitt  
Associate General Counsel  
Texas Tech University  
Texas Tech University Health Sciences Center  
Office of the Vice President and General Counsel  
P. O. Box 4641  
Lubbock, Texas 79409-2021

Dear Ms. DeWitt:

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# 6509; this decision is OR89-211.

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.

Texas Tech University received a request for student evaluation forms of faculty members or compilations of those evaluation responses. You suggest that this information is protected from disclosure under sections 3(a)(2) and 3(a)(11) of the Open Records Act.

Section 3(a)(2) protects "information in personnel files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." This section protects personnel file information only if its release would cause an invasion of privacy under the test articulated for section 3(a)(1) of the act by the Texas Supreme Court in Industrial Found. of the South v. Texas Indus. Accident

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Bd., 540 S.W.2d 668 (Tex. 1976), cert. denied, 430 U.S. 930 (1977); Open Records Decision No. 441 (1986).

Under the Industrial Foundation case, information may be withheld on common-law privacy grounds only if it is highly intimate and embarrassing, and of no legitimate concern to the public. The disclosure of even highly subjective evaluations does not ordinarily constitute an invasion of privacy under section 3(a)(2). See Attorney General Opinion JM-36 (1983); Open Records Decision Nos. 316 (1982); 167 (1977). Even if narrative statements on the evaluation forms contain highly subjective comments that are intimate and embarrassing to the faculty member in question, they are not protected by section 3(a)(2) unless they are also of no legitimate interest to the public. The public certainly has an interest in the manner in which a university faculty member conducts his class or relates to his students. See Open Records Decision No. 464 (1987). Consequently, none of the responses in the evaluations you submitted may be withheld from disclosure under section 3(a)(2).

You also suggest that the evaluations may be protected under section 3(a)(11) of the act. The purpose of section 3(a)(11) is to protect from disclosure advice, opinion and recommendation that actually play a role in the deliberative process of an administrative agency. As indicated, at issue here are handwritten student evaluations, as well as computerized and handwritten compilations of the evaluation responses.

In Attorney General Opinion JM-36 (1983), this office indicated that section 3(a)(11) protects individualized student evaluations of faculty members. Handwritten, anonymous evaluations are protected from disclosure under sections 3(a)(14) and 14(e) of the Open Records Act if they identify individual students or their identities are easily detectable therefrom. See Attorney General Opinion JM-36. Additionally, anonymous, typewritten evaluations may be withheld if the comments relate incidents to which a relatively small number of students could be involved. See Open Records Decision No. 294 (1981).

However, final compilations of the evaluation responses are not protected by section 3(a)(11). See Open Records Decision No. 209 (1978); see also Open Records Decision No. 464. Such compilations are factual and informational in character. Section 3(a)(11) does not protect facts and observations of fact. Open Records Decision No. 450 (1986). Further, you have not demonstrated how this information

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plays a role in the University's deliberative processes. Consequently, the statistical compilations of the evaluation responses must be released.

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 OR89-211.

Yours very truly,

*Open Government Section  
of the Opinion Committee*   
Open Government Section  
of the Opinion Committee  
Approved by David A. Newton  
Assistant Attorney General

DAN/FAF/bc

Ref.: ID# 6509

Enclosures