



THE ATTORNEY GENERAL
OF TEXAS

JIM MATTOX
ATTORNEY GENERAL

December 11, 1989

Mr. Neil Nichols
General Counsel
Texas Youth Commission
P.O. Box 1260
Austin, Texas 78765

Dear Mr. Nichols:

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# 7835; this decision is OR89-416.

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. Attorney General Opinion H-436 (1974). 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.

The Texas Youth Commission indicates that it received a request from a former employee for a copy of the tape of his post-termination hearing. Because the tape contains discussion of the treatment and supervision of identifiable students, the commission is concerned about releasing this information to the public. Section 3(a)(1) of the Open Records Act, in conjunction with section 51.14(b) of the Texas Family Code, protects this information from required public disclosure.

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You note, however, that access to the tapes has been provided to this requestor because of due process concerns. Individuals subject to government action often have rights of access, granted by laws other than the Open Records Act, to information on which the governmental body bases its action. Attorney General Opinion H-626 (1975). This is not the equivalent of release to the public, and does not violate the Open Records Act's prohibition on the release of confidential information. This office cannot resolve whether Mr. Richards has a due process right to the tapes at issue.

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 OR89-416.

Yours very truly,

Open Government Section
of the Opinion Committee 

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

JSR/le

Ref.: ID# 7835

cc: Mr. Douglas Richards
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