



THE ATTORNEY GENERAL
OF TEXAS

August 16, 1990

JIM MATTOX
ATTORNEY GENERAL

Mr. Scott A. Kelly
Assistant General Counsel
The Texas A&M University System
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College Station, Texas 77843-1116

OR90-380

Dear Mr. Kelly:

By your letter of May 10, you raise several exceptions to the required public disclosure of information based on the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request for an attorney general opinion on this matter has been assigned ID# 9607.

Texas A & I University received a request from a reporter for a copy of a summary of all results of drug tests administered to the Texas A & I University [the university] football team by Texas A & I University and NCAA officials. The requestor stipulated that she is not seeking the names of players or any information that could identify a player.

You begin by asserting that the university does not possess a summary of the results of the drug tests and that the Open Records Act does not require a governmental body to create information that does not already exist. You submitted representative samples of test result forms which contain a control number which identifies a player with the test results. The representative sample titled "Daily Worksheet" contains 20 test results. Although the university has not generated a separate summary of results, we think that you can comply with the request by supplying the list of test results and deleting any information - names or control numbers - which could identify persons tested.¹ See Attorney General Opinion JM- 672 (1987). Some compilation may be required under the Open Records Act.

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1. Information identifying an individual student is
(Footnote Continued)

Next, you assert that the test results are student records excepted from disclosure by section 3(a)(14). That exception applies to information that identifies an individual student. Open Records Decision No. 294 (1981). You argue that the test results could be used to trace the identity of a particular football player. See Open Records Decision No. 206 (1978). It is difficult to imagine how the data on the drug test results in the sample you submitted can be used to determine whether a particular student's test result was negative or positive. Thus, we conclude that the listing of test results, without any identifying information, is not protected by section 3(a)(14). See Open Records Decision Nos. 352 (1982); 206 (1978); 132 (1976).

Finally, you raise section 3(a)(1) of the Open Records Act which excepts from disclosure information deemed confidential by law, either Constitutional, statutory, or by judicial decision. In this regard, you raise the common-law privacy issue of false light privacy. You assert that "by requesting the results of drug tests without information that could identify a player with the test results, the requestor will put those players who were not tested or who tested negative in the position of appearing to have possibly tested positive for the use of illicit drugs."

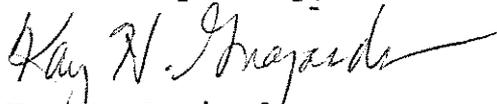
False light privacy rights protect only the subject of the information. See Open Records Decision No. 432 (1985). There is no "subject" in the sample you sent for our inspection if any identifying information is deleted. Even if every sample was positive and the identities of the persons tested were known, you have not indicated that serious doubt about the truth of the information exists or in any way called into question the validity of the test results. Thus, release of the summary of the test results would not place any football player in a false light. See Open Records Decision No. 352 (1982). Consequently, you must release the information in the form requested.

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

(Footnote Continued)
closed to the public by section 3(a)(14) of the Open Records Act. Open Records Decision No. 294 (1981).

published open records decision. If you have questions about this ruling, please refer to OR90-380.

Yours very truly,



Kay H. Guajardo
Assistant Attorney General
Opinion Committee

KHG/le

Ref.: ID# 9607, 9595

cc: Ms. Libby Averyt
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