



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

March 19, 1992

Richard Rafes, J.D., Ph.D.  
Vice President and General Counsel  
University of North Texas  
Texas College of Osteopathic Medicine  
P. O. Box 13426  
Denton, Texas 76203-3426

OR92-103

Dear Dr. Rafes:

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# 15066.

You have received a request for copies of written allegations made against an employee of the University of North Texas (the "university"). Specifically, the requestor seeks "a copy of the written allegations against me which we discussed in our meeting on Thursday, January 30, 1992." You have submitted to us for review several statements written by university employees which detail alleged employee misconduct. You seek to withhold these documents under sections 3(a)(1) and 3(a)(11) of the Open Records Act.

Section 3(a)(1) excepts from required public disclosure "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." You claim that the requested information is excepted from required public disclosure by the informer's privilege, as incorporated into the Open Records Act by section 3(a)(1). Open Records Decision No. 549 (1990). The informer's privilege applies when a person reports violations of the law to officials having a duty to enforce the

law. Open Records Decision No. 515 (1988) (copy enclosed). The informer's privilege aspect of section 3(a)(1) does not protect written statements complaining of a public employee's work performance by fellow workers when those statements do not reveal crimes or the violation of specific laws to officials charged with enforcing those laws. *Id.*

We have examined the documents submitted to us for review. Although the written statements document possible violations of the law, you have not demonstrated nor is it otherwise apparent that the university has the duty to enforce these laws. *See id.* Accordingly, the requested information may not be withheld from required public disclosure under the informer's privilege aspect of section 3(a)(1).

You also claim that the requested information is excepted from required public disclosure by section 3(a)(11), which excepts "inter-agency or intra-agency memorandums or letters which would not be available by law to a party in litigation with the agency." "It is well established that the purpose of section 3(a)(11) is to protect from public disclosure advice, opinion, and recommendation used in the decisional process within an agency or between agencies. This protection is intended to encourage open and frank discussion in the deliberative process." Open Records Decision No. 538 (1990) (citing *Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.--San Antonio 1982, writ ref'd n.r.e.); Attorney General Opinion H-436 (1974); Open Records Decision No. 470 (1987)). Advice, opinion, and recommendations recorded in a performance evaluation of an employee are protected from public disclosure if they are used in the deliberative process. Open Records Decision No. 468 (1987) at 1; *see also* Open Records Decision Nos. 464 (1987); 345 (1982). Purely factual information, however, does not constitute advice, opinion, or recommendation and may not be withheld under section 3(a)(11). Open Records Decision No. 450 (1986).

Having examined the documents submitted to us for review, we conclude that some of the requested information constitutes advice, opinion, or recommendation. For your convenience, we have marked the information which may be withheld from required public disclosure under section 3(a)(11) of the Open Records Act. The remainder of the information 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 OR92-103.

Yours very truly,



Mary R. Crouter  
Assistant Attorney General  
Opinion Committee

MRC/GK/nhb

Enclosures: Marked Documents  
Open Records Decision No. 515

Ref.: ID# 15066

cc: Mr. Tommy Lyles  
University of North Texas  
P. O. Box 13426  
Denton, Texas 76203-3426