



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 15, 1992

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

OR92-401

Dear Ms. Nell:

Texas Tech University asks whether certain information is subject to required public disclosure under the Texas Open Records Act, V.T.C.S. article 6252-17a. Your request was assigned ID# 16039.

Texas Tech has received a request from Bobby Cannon, d/b/a Covergirls Photography, for disclosure of a letter or memorandum issued by the administration concerning Covergirls Photography. Texas Tech has submitted for our review a memorandum meeting the description of the requested document. Texas Tech claims that this information is excepted from required public disclosure by Open Records Act section 3(a)(1), 3(a)(11), and 14(e).

Open Records Act section 3(a) states that all information in the possession of a governmental body is public information, unless the information meets one of the enumerated exceptions of the Act. Section 3(a)(1) excepts from required public disclosure "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." The memorandum identifies two Texas Tech students; the university contends that the names of these students should be deemed confidential pursuant to section 3(a)(1). Information may be withheld pursuant to section 3(a)(1) on the basis of common law privacy if it is highly intimate or embarrassing and its release would be highly objectionable to a person of ordinary sensibilities, and there is no legitimate public interest in its disclosure. Open Records Decision Nos. 579 at 2, 562 at 9, 561 at 5, 554 at 3 (1990); 438 at 6 (1986); 409 at 2 (1984). We conclude that disclosure of the identities of the two students would be potentially embarrassing and would not serve any legitimate public interest.

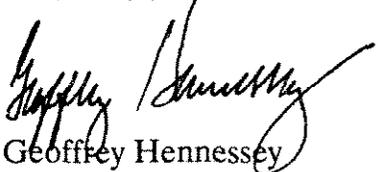
Accordingly, the names of the students should be redacted, i.e. blacked-out, from the memorandum. Because we resolve this issue pursuant to 3(a)(1) we need not resolve your claim that the identities of the students are also excepted by section 14(e).

You also claim that the memorandum as a whole is excepted from required public disclosure by section 3(a)(11). Section 3(a)(11) excepts from required public disclosure "inter-agency or intra-agency memorandums or letters which would not be available by law to a party in litigation with the agency." Advice, opinion, or recommendation that is used in the deliberative process is excepted from required public disclosure under 3(a)(11). Open Records Decision No. 574 (1990). Section 3(a)(11) does not apply to factual information or allegations of fact. Open Records Decision No. 419 (1984). Therefore, advice, opinion, and recommendation as reflected in the memorandum should be redacted and withheld pursuant to section 3(a)(11). However, the application of section 3(a)(11) does not warrant withholding the document in its entirety as you suggest; the remaining portions of the memorandum should be released.

Enclosed please find the document you submitted for our review; we have redacted those portions of the document which we believe are excepted from public disclosure pursuant to section 3(a)(1) and 3(a)(11). The redacted document should be released to the requester.

Because case law and prior published open records decisions resolve your request, we 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 OR92-401.

Very truly yours,


Geoffrey Hennessey
Assistant Attorney General
Opinions Committee

Enclosure: Submitted Documents
(as marked)

cc: Mr. Bobby Cannon
Covergirls Photography
2707 62nd Street
Lubbock, Texas 79413