



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 8, 1992

Mr. James B. Bond
Deputy Chancellor and General Counsel
The Texas A&M University System
Office of the General Counsel
300 System Administration Bldg.
College Station, Texas 77843-1116

OR92-466

Dear Mr. Bond:

The Texas A&M University System (Texas A&M) 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# 16181.

Pursuant to the Open Records Act, Texas A&M has received a request for, inter alia, all of the following: records concerning the unsuccessful discrimination suit of [REDACTED] (Item 1); correspondence of the Texas A&M Office of General Counsel concerning [REDACTED]'s application for readmission to doctoral studies (Item 2); records maintained by General Counsel concerning the [REDACTED] case (Items 4 & 6); opinions, recommendations, or reviews rendered by A&M General Counsel since January 1990 regarding the University's policies on discrimination or harassment (Items 7 & 8); opinions, recommendations, or reviews rendered by A&M General Counsel since January 1990 regarding gender discrimination and harassment in the Corp of Cadets at Texas A&M (Item 9); records reflecting the number of Texas A&M Ph.D.s who failed one, two, three, or four preliminary examinations (Item 10); and records reflecting the number of students readmitted to Texas A&M doctoral programs (Item 12). Texas A&M has submitted certain documents (Exhibits B through F) for our review. Texas A&M claims that these documents are excepted from public disclosure by Open Records Act sections 3(a)(1), 3(a)(2), 3(a)(7), 3(a)(11), and 3(a)(14).

In Items 10 and 12 the requestor requests certain statistical information. You have advised that Texas A&M does not maintain statistics of the sort requested in Items 10 and 12. The Open Records Act does not require a governmental body to create new information or to prepare new information in a form requested by the

requestor. See Open Records Decision Nos. 467 (1987); 452 (1986); 145 (1976). Therefore, Texas A&M need not furnish the requested information.

Open Records Act section 3(a)(1) excepts from required public disclosure "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." The Texas Medical Practices Act, V.T.C.S. article 4495b, section 5.08(a)-(c), states that medical records created by a physician or at the physician's direction are deemed confidential and prohibits the unauthorized disclosure of medical information by any person who obtains the information. The Texas courts have also recognized that medical records are within a zone of privacy protected by the United States Constitution. See *Alpha Life Insur. Co. v. Gayle*, 796 S.W.2d 834, 836 (Tex. App.--Houston [14th Dist.] 1990). Exhibit C, submitted for our review, includes medical records which are excepted from required public disclosure by Open Records Act section 3(a)(1).

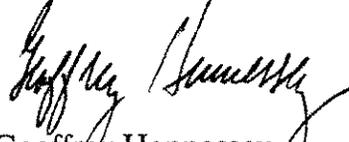
Open Records Act section 3(a)(7) excepts from required public disclosure "matters in which the duty of the Attorney General of Texas or an attorney of a political subdivision, to his client, pursuant to the Rules and Cannons of Ethics of the State Bar of Texas are prohibited from disclosure." Section 3(a)(7) incorporates the attorney-client privilege. See Open Records Decision No. 574 (1990). The attorney-client privilege prohibits an attorney from divulging any confidential information received from the client as well as information relating to a client or furnished by the client during the course of or by reason of the representation of the client. *Id.* Exhibit E concerns communications between Texas A&M administration and the General Counsel; these communications are within the attorney-client privilege and thus are excepted from required public disclosure by Open Records Act section 3(a)(7).

Open Records Act section 3(a)(14) prohibits educational institutions funded in whole or in part by the state from releasing student records to third parties. The federal Buckley Amendment, 20 U.S.C. § 1232g, prohibits educational institutions that receive federal funds from disclosing a student's educational records to third parties. Open Records Act section 14(e) incorporates the Buckley Amendment. Exhibits B, D, and F submitted for our review consist of educational records and are therefore excepted from required public disclosure by Open Records Act sections 3(a)(14) and 14(e).

In sum, we conclude that the documents submitted for our review are excepted from required public disclosure by Open Records Act sections 3(a)(1),

3(a)(7), 3(a)(14), and 3(a)(14e); we need not address your claim that sections 3(a)(2) and 3(a)(11) also apply. Because 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 OR92-466.

Very truly yours,



Geoffrey Hennessey
Assistant Attorney General
Opinion Committee

GH/lmm

Ref.: ID# 16181
ID# 16217
ID# 16305
ID# 16352
ID# 16446
ID# 16476
ID# 16638

cc: Mr. Greg Moses
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