



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 13, 1995

Ms. J. Renée Vaughn
Associate General Counsel
Texas Tech University Health Sciences Center
Office of Vice President and General Counsel
P.O. Box 42021
Lubbock, Texas 79409-2021

OR95-386

Dear Ms. Vaughn:

You ask for reconsideration of this office's conclusion in Open Records Letter No. 95-125 (1995) that information relating to a particular department's peer evaluations are subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 32571. For the reasons discussed below, we decline to reconsider our prior ruling.

In Open Records Letter No. 95-125 (1995), this office concluded that the requested documents were not excepted from disclosure pursuant to section 552.111.¹ You ask that we reconsider our interpretation of section 552.111 to reflect the unique set of facts in your situation and allow you to withhold the requested documents because of the undue hardship and prejudice which would result from disclosure of the information.

¹Your original brief submitted regarding Open Records Letter No. 95-125 (1995) requested that we reconsider our interpretation of section 552.111 in Open Records Decision No. 615 (1993) in light of a July 25, 1994, ruling in *Klein Independent School District v. Lett*, No. 93-061897 (80th Dist. Ct., Harris County, Tex., July 25, 1994). This office was not a party to that action. Furthermore, appellate courts in Texas do not rely upon unpublished opinions as authority. *Wheeler v. Aldama-Luebbert*, 707 S.W.2d 213, 216 (Tex. App.--Houston [1st Dist.] 1986, no writ) ("An unpublished opinion of this Court or any other court has no authoritative value."); *see also* Tex. R. App. P. 90(i) ("Unpublished opinions shall not be cited as authority by counsel or by a court."); *Orix Credit Alliance v. Omnibank*, 858 S.W.2d 586, 593 n.4 (Tex. App.--Houston [14th Dist.] 1993, writ dismissed w.o.j.); *Carlisle v. Philip Morris, Inc.*, 805 S.W.2d 498, 501 (Tex. App.--Austin 1991, writ denied). For this reason, the Office of the Attorney General generally does not consider unpublished rulings in making determinations under the Open Records Act. This office continues to adhere to Open Records Decision No. 615 (1993).

Under the Open Records Act, this office is authorized to determine only whether a governmental body is required to release certain information to members of the public. *See* Gov't Code § 552.306(a). This office is not authorized to take into consideration the special circumstances regarding a particular requestor when determining whether a governmental body must release information to the general public except as specifically provided by the act. *See, e.g., id.* §§ 552.008, .023, .026 (special rights of access). While we understand your dilemma, our obligation is simply to interpret the statute as written. Because we believe that Open Records Letter No. 95-125 (1995) was correct in its conclusion, we decline to reconsider. Therefore, you must release the documents at issue as directed in that ruling.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Government Section

LRD/LMM/rho

Ref.: ID# 32571

Enclosures: Submitted documents

cc: Mr. Mike Bobo
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(w/o enclosures)