



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

**JOHN L. HILL
ATTORNEY GENERAL**

May 7, 1974

**The Honorable T. M. Harvey, President
Henderson County Junior College
Athens, Texas 75751**

**Open Records Decision No. 31
Re: Various college records.**

Dear Dr. Harvey:

Over the course of five months ending in January of 1974, a former instructor at Henderson County Junior College has made written requests, in accordance with Article 6252-17a, V. T. C. S., the Open Records Act, for a number of documents. Having received no reply from you, the requesting party notified this office of your failure to comply with Section 7 (a) of the Open Records Act. In response, you advised the requesting party of your willingness to make available some of the requested information at stated costs; of the non-existence of certain other records sought; and of your intention to seek a decision from us as to whether the materials requested are disclosable as public information under the Act.

The requestor is a former employee who is requesting information about the employment relationship, reasons for termination, etc. In general, the applicable provision of the Open Records Act is contained in the provision in Sec. 3 (a) (2): ". . . all information in personnel files of an individual employee within a governmental body is to be made available to that individual employee. . ."

This rule should be read broadly to include all information relevant to the individual's employment relationship. The United States Supreme Court has said:

"[W]here governmental action seriously injures an individual, and the reasonableness of the action depends on fact findings, the evidence used to prove the Government's case must be disclosed to the individual so that he has an opportunity to show that it is untrue."

Greene v. McElroy 360 U. S. 474, 496 (1959). See Attorney General Opinion No. H-249 (1974).

Generally, the costs specified in your letter are consonant with the January 7, 1974, policy guidelines of the Board of Control. See, Article 6252-17a, Sec. 9. As for the cost of the faculty handbook and its supplement, we think that Article 4413 (33), V. T. C. S., Secs 1 and 2, is controlling. This statute specifies that the "charge for publications and other printed matters," where not otherwise specifically directed by statute, shall be no greater than "reasonably [necessary to] reimburse the state for the actual expense of printing such publications or printed matter." We believe that it should be possible for you to fix the actual expense of the handbook, with supplement, and to provide same at such cost to the requesting party. Of course, if the requestor does not desire copies of the records, he is normally entitled to have access to them without charge.

As to requests for information which was never reduced into such a form as would constitute "information collected, assembled, or maintained by a governmental body" within the scope of the Open Records Act, nothing can be produced for inspection and copying and no further consideration is given to the availability of those items.

The remaining documents and materials, to the extent they exist as "information collected, assembled, or maintained by a governmental body," must be presumed public. Section 7 (a) of the Open Records Act declares:

"If a governmental body receives a written request for information which it considers within one of the exceptions stated in Section 3 of this Act, but there has been no previous determination that it falls within one of the exceptions, the governmental body within a reasonable time, no later than ten days, after receiving a written request must request a decision from the attorney general to determine whether the information is

within that exception. If a decision is not so requested, the information shall be presumed to be public information. " (Emphasis added).

As we stated in Open Records Decision No. 26 (1974):

"Ordinarily, this presumption [created by Sec. 7 (a)] will not be overcome unless there is a compelling demonstration that the information requested should not be released to the public, as might be the case, for instance, if it is information deemed confidential by some other source of law. " (Emphasis added).

We do not find that there has been a "compelling demonstration" that the remaining instruments should not be released to the public. They consist of faculty newsletters prepared by you and furnished to your staff; the findings of one of your deans regarding his investigation into an alleged attack by another instructor upon the requesting party; a letter sent to a teachers' association concerning the requesting party's personnel file; a list of all classes taught under the supervision of the Academic Dean, the number of students in each, the name of the instructor for each, his regular salary and the amount of extra compensation for teaching night classes off campus, if he or she does; and a teaching evaluation of the requesting party made by the Dean of the Technical Vocational Department.

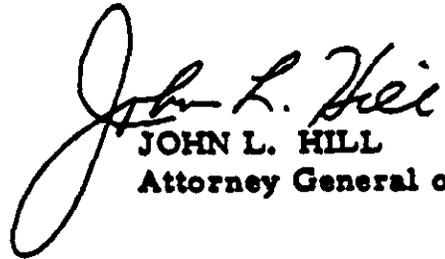
Thus, if these items of information exist (as we are informed some do not) they should be disclosed in accordance with the dictates of the Open Records Act.

Regarding the letter to the student notifying him that he could return to school, should it exist and should you believe it to be protected by a right of privacy, we invite you to submit it to this office for further examination before release. If we concur that its release would violate an existing right of privacy, you may be advised in a supplement to this

decision that it need not be disclosed.

Finally, there is the matter of the request for other information relative to the requestor's employment, non-renewal and firing. In your reply, you declared your willingness to cooperate in this request, but expressed a need for greater specificity in the enumeration of what was sought. While we sympathize with the difficulties such requests create, we believe it is incumbent upon the agency to make a good faith effort to attempt to identify such records as might fit the request and then to advise the requestor of the types of documents available so that he may properly narrow his request to specifics.

Very truly yours,


JOHN L. HILL
Attorney General of Texas

APPROVED:


COLIN J. CARL
Staff Legislative Assistant


DAVID M. KENDALL, Chairman
Opinion Committee