



THE ATTORNEY GENERAL OF TEXAS

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ATTORNEY GENERAL

JULY 10, 1975

The Honorable Carlton B. Dodson
Resident Legal Counsel
Texas Tech University Complex
P. O. Box 4641
Lubbock, Texas 79409

Open Records Decision No. 101

Re: Faculty member access
to student evaluations of his
performance made under prom-
ise of confidentiality.

Dear Mr. Dodson:

Pursuant to section 7 of the Open Records Act, article 6252-17a, V. T. C. S., you request our decision as to whether student evaluations of a faculty member written under an assurance of confidentiality are excepted from disclosure.

A faculty member whose employment has been terminated by the University has requested all records pertaining to him and his employment relationship, particularly those concerning evaluations of his performance as a faculty member and the decision to terminate his employment.

The evaluations in question were written in November 1973 by students in response to a request by the departmental chairman on a form which stated:

I am asking you to write an objective, analytical, and specific evaluation of the teaching practicum in which you are enrolled. Enclosed herewith you will find an envelope addressed to me and marked personal and confidential. Only I shall open it and read your evaluation. I shall not reveal your identity. . . (emphasis in original).

It is your position that the information is excepted from disclosure because it is not a part of the permanent personnel file of the faculty member. Such a contention was answered adversely to your position in Open Records Decision No. 55(1974). The physical form or location of information is not determinative of whether the information is required to be disclosed under the Act. Attorney General Opinion H-483 (1974).

In Open Records Decision No. 55 (1974) we held that information located in the files of the University and having to do with the performance of a faculty member and evaluation of performance vis-a-vis his retention as a faculty member is information which is made available to the member by section 3(a)(2) of the Open Records Act.

You contend that the student comments "are not a part of the official advice and recommending process. These comments have no official probative or significant effect on the administrative decision process. At most, they are merely another bit of information which must be carefully weighed in light of the circumstances under which the same are given and received." Your statements make it clear that this evaluative information is considered vis-a-vis the faculty member's retention as a faculty member. The informality with which it is considered or the weight given it within the decision process do not remove it from that process nor from the provisions of the Open Records Act.

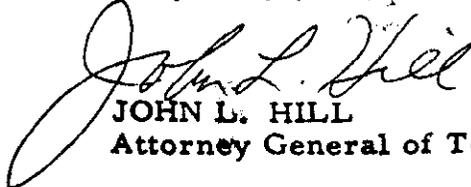
You contend that since the evaluations by the students were obtained under a promise of confidentiality, the University cannot disclose the information to the faculty member without invading the students' right to privacy and violating the agreement to maintain their confidentiality.

We have held that a governmental body cannot create exceptions to the Open Records Act by a promise of confidentiality if the Act requires the information to be disclosed. Attorney General Opinion H-258 (1974); Open Records Decision Nos. 70 (1975); 64(1974); 55A (1975). An agreement to hold this type of information as confidential made after the effective date of the Open Records Act, June 14, 1973, is in contravention of the Act and is unauthorized. Open Records Decision 55A (1975).

We do not believe that an unauthorized agreement as to confidentiality gives rise to a "right of privacy" on the part of the person induced to make candid comments about another as against the person commented upon.

It is our decision that these student evaluations of this faculty member are required to be disclosed to him on his request by the provisions of section 3(a)(2) of the Act.

Very truly yours,


JOHN L. HILL
Attorney General of Texas

APPROVED:


DAVID M. KENDALL, First Assistant


C. ROBERT HEATH, Chairman
Opinion Committee