



# THE ATTORNEY GENERAL OF TEXAS

AUSTIN, TEXAS 78711

JOHN W. HILL,  
ATTORNEY GENERAL

November 26, 1975

The Honorable W. O. Shultz II  
The University of Texas System  
Law Office  
201 West 7th Street  
Austin, Texas 78701

Open Records Decision No. 117

Re: Whether salary recommendations by deans to president of university are public.

Dear Mr. Shultz:

You have received a request for the recommendations of deans to the president of the University concerning merit salary increases used in preparation of the budget. You contend that this information is excepted from required public disclosure under the intra-agency memoranda exception, section 3(a)(1) of the Open Records Act, article 6252-17a, V. T. C. S., and as information in personnel files, under section 3(a)(2) of the Act.

Information pertaining to the setting and adjusting of an individual's salary necessarily involves an evaluation of the employee's performance. Attorney General Opinion H-496 (1975). In a variety of circumstances we have consistently held that evaluations of identifiable employees' performances are excepted from compelled public disclosure. While an employee is entitled to access to evaluations of his performance under section 3(a)(2), the information should not be made public without his consent. Open Records Decision No. 93 (1975). We have held this type of information to be excepted whether it is discussed at, or reflected in the minutes of, a meeting of a governmental body [Attorney General Opinion H-496 (1975), Open Records Decisions 103, 93, 86, 82, 81, 68 (1975), 60 (1974)] or is contained in an intra-agency memorandum or investigative report, or otherwise in the personnel file, Open Records Decisions 115, 110, 106, 102, 90, 71 (1975), 55, 20 (1974). Our application of the section 3(a)(2) exception in this regard is consistent with the application of a similar exception contained in the federal Freedom of Information Act, 5 U. S. C. A. § 552(b)(6). See Vaughn v. Rosen, 383 F. Supp. 1049, 1055 (D. C. 1974). We also note that a governmental employee's interest in having evaluative

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information held in confidence, at least that of a derogatory nature, may be of constitutional dimension. See Board of Regents v. Roth, 408 U.S. 564, 573 (1972); Wisconsin v. Constantineau, 400 U.S. 433, 437 (1971); Wieman v. Updegraff, 344 U.S. 183, 191 (1952); Kaprelian v. Texas Woman's University, 509 F.2d 133, 137-139 (5th Cir. 1975); Sims v. Fox, 505 F.2d 857, 863 (5th Cir. 1974).

The exception for intra-agency memoranda contained in section 3(a)(11) of the Open Records Act was designed to protect from compelled disclosure advice and opinion on policy matters and to encourage open and frank discussion between subordinate and chief concerning administrative action. Attorney General Opinion H-436 (1974). We have previously held that this exception is applicable to memoranda involving recommendations and evaluations of personnel, and believe that it is applicable here. Open Records Decisions Nos. 110, 106, 86, 81 (1975), 55, 20 (1974).

The individual making the request is a staff writer for the Daily Texan. He contends in his request, and it is also contended in the brief submitted on behalf of the Daily Texan, that the information is required to be made public by section 6(a)(5) of the Act which provides:

Without limiting the meaning of other sections of this Act, the following categories of information are specifically made public information:

...

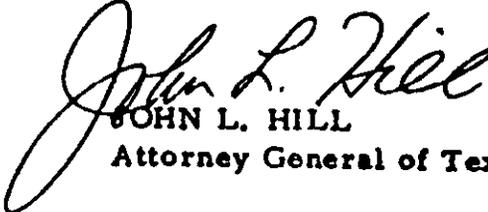
(5) all working papers, research material, and information used to make estimates of the need for, or expenditure of, public funds or taxes by any governmental body, upon completion of such estimates . . . .

We believe that in this instance, the specific exceptions applicable to this information, section 3(a)(2) and 3(a)(11), control over the more general provision of section 6(a)(5). Section 6 specifically indicates that it does not limit the exceptions set out in section 3. See Attorney General Opinion H-118 (1973).

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It is our decision that the information requested is excepted from required public disclosure under exceptions 3(a)(2) and 3(a)(11).

Very truly yours,

  
JOHN L. HILL

Attorney General of Texas

APPROVED:



DAVID M. KENDALL, First Assistant



C. ROBERT HEATH, Chairman  
Opinion Committee