



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN, TEXAS 78711**

JOHN L. HILL  
ATTORNEY GENERAL

March 11, 1976

The Honorable Lorene Rogers  
President  
The University of Texas at Austin  
Austin, Texas 78701  
  
Attention: W.O. Shultz

Open Records Decision No. 121  
  
Re: Whether state agency  
financial records being  
examined by the district  
attorney are public under  
the Open Records Act.

Dear Dr. Rogers:

You have received two requests for certain financial records of the Division of Extension of the University of Texas at Austin. You advise that many of the records are in the custody of the District Attorney of Travis County, who is reviewing them in light of pending criminal charges.

It is your position that these records relate to criminal litigation which is pending as a result of indictments returned by the Travis County Grand Jury and as such are excepted from disclosure by section 3(a)(3) of the Open Records Act, article 6252-17a, V.T.C.S., which provides that the type of information excepted from required disclosure includes:

information relating to litigation of a criminal or civil nature and settlement negotiations, to which the state or political subdivision is, or may be, a party, or to which an officer or employee of the state or political subdivision, as a consequence of his office or employment, is or may be a party, that the attorney general or the respective attorneys of the various political subdivisions has determined should be withheld from public inspection. . . .

Under the facts presented to us, we believe the class of information requested relates to "litigation of a criminal or civil nature . . . to which the state . . . is, or may be, a party . . . ." See Attorney General Opinion H-483 (1974). The statute contemplates that the attorney for the State in the litigation will make the determination whether the information should be released. In this case the attorney for the State is the District Attorney of Travis County, and under section 3(a)(3) he has the responsibility to determine whether the information should be withheld from public inspection. Open Records Decision Nos. 105 and 78 (1975). Absent such a determination by the District Attorney, we believe the information is required to be disclosed.

You indicate that other information has been requested for which you do not assert any section 3 claim. You do indicate that the information is currently being used by the University in its own investigation. You urge that "inspection and copying of the requested records should be precluded pursuant to the exception contained in Section 4 of Article 6252-17a, Vernon's Civil Statutes." That section provides in part:

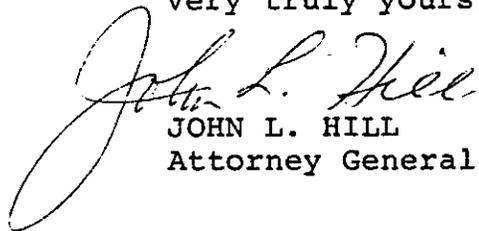
If the information is in active use or in storage and, therefore, not available at the time a person asks to examine it, the custodian shall certify this fact in writing to the applicant and set a date and hour within a reasonable time when the record will be available for the exercise of the right given by this Act.

You indicate that the duration of the University's investigation is uncertain and that no date and hour for inspection of the records can be set until it can be determined when the records will no longer be needed for the investigation.

We cannot agree with this contention. We have previously said that the portion of a file which is not then in immediate active use should be disclosed unless it is impossible to separate it from that which is in use. Open Records Decision No. 57 (1974). Section 4 requires information to be promptly produced at the time a person requests it, or within a reasonable time of the request if the information is in active use or storage. This narrow exception to the rule of prompt production simply permits an agency to avoid unreasonable disruption of its immediate business, by scheduling a more convenient, but reasonable, time at which the requestor must be given the information sought. It is our opinion that the production of this information would not unreasonably disrupt the immediate business of the University.

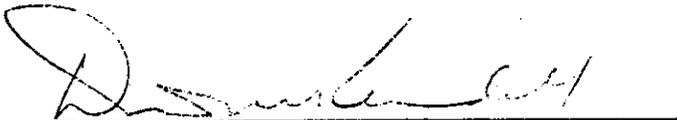
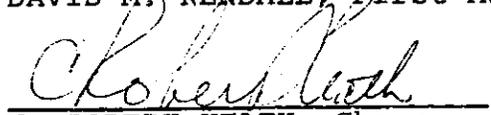
Accordingly, it is our conclusion that information relating to the District Attorney's investigation of possible criminal activity is excepted from disclosure if the District Attorney concludes that the information should not be released due to its effect on reasonably anticipated litigation. Section 4 does not permit an agency to delay release of information until all information of that type is no longer being used. The University must set a date and hour when information which is in immediate active use can be inspected. The portion of a file which is not in immediate active use should be separated, if possible, and produced immediately.

Very truly yours,



JOHN L. HILL  
Attorney General of Texas

APPROVED:

  
DAVID M. KENDALL, First Assistant  
C. ROBERT HEATH, Chairman  
Opinion Committee

jwb