



THE ATTORNEY GENERAL  
OF TEXAS

AUSTIN, TEXAS 78711

JOHN L. HILL,  
ATTORNEY GENERAL

September 13, 1976

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

Open Records Decision No. 142  
Re: Whether minutes of the  
Southwest Conference main-  
tained by a state university's  
faculty representative to  
the conference is public  
under the Open Records Act.

Dear Dr. Rogers:

The University of Texas received two requests for access to the minutes of certain meetings of the Southwest Athletic Conference, which minutes are held by Professor J. Neils Thompson, the University's faculty representative to the Conference.

It is the University's contention that minutes held by the University's representative to the Conference are his personal notes, and are not "information collected, assembled, or maintained" by the University "in connection with its official business" within the meaning of section 3, article 6252-17a, V.T.C.S., the Open Records Act. We are unable to agree with this contention. If the information requested was obtained by the University's representative to the Conference in his official capacity as representative, we believe that he holds it on behalf of the University and that it is information within the scope of section 3(a) of the Act. See Attorney General Opinion H-258 (1974); Open Records Decisions No. 109 (1975), 95 (1975) and 50 (1974). Compare Open Records Decision No. 77 (1975), which involved the handwritten personal notes of a governmental employee made solely for his own use. We need not and do not deal with the issue of whether the Southwest Athletic Conference may be a governmental body within the meaning of section 2(1)(F) of the Open Records Act. The fact that the records were generated by another entity is irrelevant to the deter-

mination of whether they are public records when they are in the possession of the University of Texas or its official representative.

The information involved consists of 55 pages of minutes of several meetings of the Southwest Athletic Conference held since January 1, 1976. The Conference is an association of public and private universities in Texas and one out-of-state public university. The purpose of the Conference is set out in its constitution, article II, as follows:

The object of the Southwest Conference is to be the regulatory body for the participation of students in each inter-collegiate athletic activity in which the Southwest Conference declares a championship.

The minutes include numerous references to individual students and their academic and athletic activities. The Family Educational Rights and Privacy Act of 1974, 20 U.S.C.A. § 1232g, (subsection (b)(1) of the Buckley Amendment) prohibits the dispersal of federal funds

to any educational agency or institution which has a policy or practice of permitting the release of education records (or personally identifiable information contained therein other than directory information, as defined in paragraph (5) of subsection (a) of this section) of students

without their consent to any individual, agency or organization, with certain enumerated exceptions.

The term "education records" is defined as

those records, files, documents, and other materials which

(i) contain information directly related to a student; and

(ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.  
20 U.S.C.A. § 1232g(a)(4)(A). (Emphasis added).

In light of this definition we believe the term "education records" would include student records furnished the Conference by its member schools and student records generated by the Conference. See also The Family Educational Rights and Privacy Act of 1974, 20 U.S.C.A. § 1232g(b)(4)(B) and the regulations promulgated thereunder; 45 C.F.R. ¶ 99.33 [41 Fed. Reg. 24662, 24674 (June 17, 1976)], which provide that a student's educational records may be disclosed to a third party [e.g. the Conference] only on the condition that the third party agrees to refuse to disclose them to anyone else without the consent of the student.

Section 14(e) of the Texas Open Records Act provides that

[n]othing in this Act shall be construed to require the release of information contained in education records of any educational agency or institution except in conformity with the provisions of the Family Educational Rights and Privacy Act of 1974 . . . 20 U.S.C.A. Section 1232g . . . . (The Buckley Amendment).

We believe the language of section 14(e) of the Open Records Act is sufficiently broad to include records of students who attend private and out-of-state institutions, as well as state supported universities, even though those records may be in the possession of the University of Texas or the Southwest Conference.

In an appendix to the minutes of the May 22, 1976, meeting, there is a record of action taken on alleged violations of Conference regulations by an identifiable employee of the member institution and by one person who is not officially connected with an institution. The Conference's General Regulations provide for the investigation of alleged violations of regulations and, if a violation is found to have occurred, section 800(h)(1) provides for disciplinary action consisting of:

Censure or reprimand [of] the person or institution involved, or both. Such action may be private or by public action.

In this case, the action was private and relates to a private individual and to an employee of an institution which is not supported by tax funds of the State of Texas.

You contend that this information would be excepted from required disclosure by section 3(a)(1) as an invasion of privacy. Section 3(a)(1) excepts from required disclosure

(1) information deemed confidential by law, either Constitutional, statutory, or by judicial decision.

The Texas Supreme Court recently discussed the common law right of privacy and the type of information which might be excepted from mandatory disclosure by the interaction of that common law right and section 3(a)(1). In Industrial Foundation of the South v. Texas Industrial Accident Board, 19 Tex. Sup. Ct. J. 417, 428 (July 24, 1976), the Court said that information

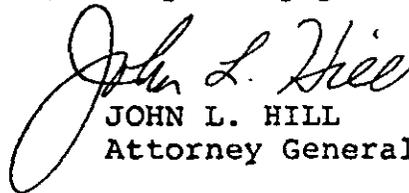
is excepted from mandatory disclosure under Section 3(a)(1) as information deemed confidential by law if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. If the information meets the first test, it will be presumed that the information is not of legitimate public concern unless the requestor can show that, under the particular circumstances of the case, the public has a legitimate interest in the information notwithstanding its private nature.

We believe an individual who had been officially, albeit privately, censured or reprimanded would find that fact highly embarrassing and would reasonably object to publication of the information. Cf. Tallahassee Democrat, Inc. v. Florida Board of Regents, 314 So.2d 164 (Fla. Ct. App. 1975).

Under the Texas Supreme Court's formulation, it is presumed that the public has no legitimate concern in the release of the information, and it is the burden of the requestor to demonstrate that concern under the particular circumstances of the case. While the requestor asserts that the public has a right to know the reasons behind action taken at meetings attended by representatives of state supported institutions, we do not believe he has overcome the presumption. The information in this case offers little to an understanding of the action of the representatives of the four Texas public schools which are conference members. The minutes contain no details of the allegation or investigation. The two items merely include the name of the individual and the action taken. We believe the presumption is strengthened in this case by the fact that neither of the two individuals named in this portion of the minutes is associated with an institution supported by the tax funds of the State of Texas.

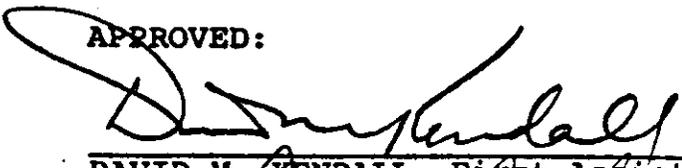
Accordingly, it is our decision that minutes of the Southwest Conference are governmental records when they are in the possession of a state supported university's faculty representative to the Conference. Those portions of the minutes relating to identifiable students are excepted from disclosure by section 14(e) of the Open Records Act. References to private censures or reprimands of two identifiable individuals who are not connected with any university supported by tax funds of the State of Texas are excepted from disclosure by section 3(a)(1). The remainder of the documents must be disclosed under the Open Records Act.

Very truly yours,

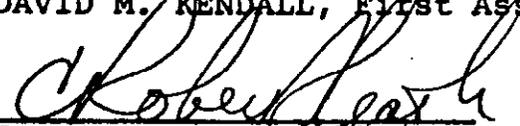


JOHN L. HILL  
Attorney General of Texas

APPROVED:



DAVID M. KENDALL, First Assistant



C. ROBERT HEATH, Chairman  
Opinion Committee

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