



# The Attorney General of Texas

December 8, 1981

MARK WHITE  
Attorney General

Supreme Court Building  
P. O. Box 12548  
Austin, TX. 78711  
512/475-2501  
Telex 910/874-1367  
Telecopier 512/475-0266

1607 Main St., Suite 1400  
Dallas, TX. 75201  
214/742-8944

1824 Alberta Ave., Suite 160  
El Paso, TX. 79905  
315/533-3484

100 Dallas Ave., Suite 202  
Houston, TX. 77002  
713/650-0666

106 Broadway, Suite 312  
Lubbock, TX. 79401  
806/747-5238

4309 N. Tenth, Suite B  
McAllen, TX. 78501  
512/682-4547

200 Main Plaza, Suite 400  
San Antonio, TX. 78205  
512/225-4191

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Mr. Howard W. Smith, Jr.  
President Ad Interim  
North Texas State University  
Denton, Texas 76203

Open Records Decision No. 293

Re: Open Records request for  
report of review of university  
biology department

Dear Mr. Smith:

Your request for our decision under the Open Records Act, article 6252-17a, V.T.C.S., concerns a report prepared by three professors unassociated with North Texas State University whom you engaged to study the university's biology department. You advise that continuing discord within the department prompted you to hire these professors to assess the situation and to advise you with respect to your role in administering the department's affairs. The professors' final report, entitled "Report of the Review Team of the Department of Biological Sciences," is a ten-page compilation of their findings and their recommendations for improving the functioning of the department. A significant portion of it centers upon the part played by certain professors in the biology department in creating and/or exacerbating the department's problems.

One of the professors discussed in the report has requested a copy of it. You base your claim that it may be withheld from disclosure upon sections 3(a)(1), 3(a)(2), 3(a)(3), and 3(a)(11) of the Open Records Act.

Section 3(a)(11) of the Open Records Act excepts from disclosure:

inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than one in litigation with the agency.

This section, which is patterned after a similar provision in the Federal Freedom of Information Act, 5 U.S.C. section 552(b)(5), is:

designed to protect from 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); Open Records Decision Nos. 231, 222 (1979); 213, 211, 209, 197, 196, 192 (1978). It is intended to protect the internal deliberative process of the public's decisionmakers. Open Records Decision No. 209 (1978). As a federal court said when construing the Freedom of Information Act counterpart:

It generally has been accepted that exemption five incorporates the governmental privilege, developed in discovery cases, to protect documents containing advisory opinions and recommendations or reflecting deliberations comprising the process by which government policy is formulated.... [T]he courts have required disclosure of essentially factual material but allowed agencies to withhold documents which reveal their deliberative or policy-making processes.

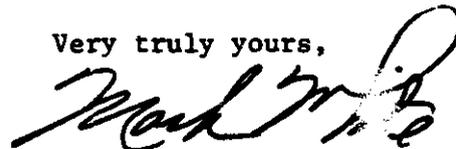
Mead Data Central, Inc. v. U.S. Department of Air Force, 566 F.2d 242, 256 (D.C. Cir. 1977).

Section 3(a)(11) applies where, as here, the information in question is prepared by outside consultants, rather than employees of the agency. Open Records Decision No. 192 (1978).

The portion of the report preceding the section entitled "Summary of Findings" (page 4) comes within none of the exceptions you cite and must be released. In our opinion, however, the remainder of it can only be characterized as a highly subjective overall assessment of the department which clearly fits into the "advice, opinion, and recommendation" mold. It discusses the department's internal problems, articulates the impressions of the review team and others in the biology department concerning certain biology professors, and assesses the extent to which those professors caused, contributed to, and/or alleviated departmental problems. It also contains specific recommendations for improving the department both internally and in terms of its national reputation.

We believe this is precisely the kind of information which section 3(a)(11) is designed to embrace. Accordingly, you may withhold everything in the report beginning with the "Summary of Findings." Our conclusion renders it unnecessary to discuss the other section 3(a) exceptions you cite, except to say that none would authorize you to withhold any additional material.

Very truly yours,



MARK WHITE  
Attorney General of Texas

Mr. Howard W. Smith, Jr. - Page 3

JOHN W. FAINTER, JR.  
First Assistant Attorney General

RICHARD E. GRAY III  
Executive Assistant Attorney General

Prepared by Jon Bible  
Assistant Attorney General

APPROVED:  
OPINION COMMITTEE

Susan L. Garrison, Chairman  
Jon Bible  
Rick Gilpin  
Jim Moellinger  
Bruce Youngblood