



**THE ATTORNEY GENERAL  
OF TEXAS**

November 13, 1986

**JIM MATTOX  
ATTORNEY GENERAL**

Ms. Merri Schneider-Vogel  
Bracewell and Patterson  
2900 South Tower Pennzoil Place  
Houston, Texas 77002

Open Records Decision No. 450

Re: Whether the Open Records Act requires a school district to release notes taken by an appraiser during evaluation of instructional personnel

Dear Ms. Schneider-Vogel:

On behalf of the Huntsville Independent School District, you have requested our decision under the Open Records Act, article 6252-17a, V.T.C.S. Your request letter states:

Under the new rules for teacher appraisal adopted by the State Board of Education in May 1986, an appraiser is required to document his or her written record of appraisal when: (a) an indication of poor quality is recorded for any indicator; and (b) credit is granted for exceptional quality. Tex. Educ. Agency 19 Tex. Admin. Code §149.44. Appraisers take notes during classroom observations. These notes may be used to prepare the formal observation report on a classroom observation. This formal observation report is discussed with the teacher. Because notes taken by the appraiser during classroom observations may be used for documentation of poor or exceptional quality, on the formal observation report, there is a question as to whether the teachers must be given access to these notes under the act.

It is our belief that these notes do not fall within the definition of public records in the act. The Texas Attorney General has previously recognized that 'personal notes of an individual employee in his sole possession and made solely for his own use are not public records.' Open Records Decision No. 77 (1975). It is the position of the Huntsville Independent School District that

these notes are personal memory aids used to help appraisers remember the specifics of a classroom observation and, as such, these notes are not public records maintained by the school district.

Section 3(a) of the Open Records Act provides that "information collected, assembled, or maintained by governmental bodies pursuant to law or ordinance or in connection with the transaction of official business is public information. . . ." In Open Records Decision No. 77 (1975), this office addressed the question of whether notes made by members of the University of Texas at Austin Academic Freedom Committee were subject to required disclosure. The decision stated:

The Academic Freedom Committee makes its decision and final report in writing, and this report is signed by the chairman of the Committee. The Committee does not maintain minutes and does not record votes during the proceedings. You state that, in fact, members of the committee often make personal notes for their individual use as memory reminders, but that the University does not require or control this.

We have received no evidence contesting your assertion that these notes are not collected and maintained by the University.

We agree that the Open Records Act does not reach the personal notes of an individual employee in his sole possession and made solely for his own use.

We believe that our conclusion is compelled by the plain words of the Open Records Act, which applies only to information which is collected, assembled or maintained by a governmental body.

The facts of the present case are distinguishable from those involved in Open Records Decision No. 77. There, the members of the faculty committee had no independent control or authority over the committee's business, and their responsibility in the matters with which they dealt ended when the committee compiled and issued its final report. For this reason, the "memory reminders" that they prepared could be accurately characterized as "personal" notes. Here, by contrast, the administrative regulation to which you referred establishes that appraisers who evaluate instructional personnel do exercise independent authority in the evaluation process and that their responsibility in that process does not cease when the official evaluation is completed. Notes taken by these appraisers during their

evaluations, moreover, will likely constitute part, if not all, of the documentation required by this regulation. Under these circumstances, these notes can hardly be called "personal notes . . . made solely for [the appraiser's] own use" within the meaning of Open Records Decision No. 77.

This case, we believe, is more closely analogous to the one with which Open Records Decision No. 327 (1982) dealt. That decision considered whether the Open Records Act required a school district to release

notes made by the principal concerning [a teacher's] actions while coaching; notes made by the athletic director about his conversation with a student regarding [the teacher]; and notes made by the athletic director about a meeting in which [the teacher] was told he could not continue coaching.

The decision held:

Open Records Decision No. 77 . . . dealt with personal notes made by individual faculty members . . . for their own use as memory aids. The university did not require or control the notes, and the notes remained in the possession of the makers.

By contrast, the facts you have given indicate that the notes of the principal and the athletic director were made in their capacities as supervisors of the employee. The notes were not in the 'sole possession' of the makers, but were part of school records, kept in school files. We believe that your basic premise, i.e., that the notes made by the principal and the athletic director are not part of the employee's personnel file, is erroneous. It is well established that anything relating to an employee's employment and its terms, constitutes information relevant to the individual's employment relationship and is a part of his personnel file. Open Records Decision Nos. 55, 31 (1974). It is our opinion that the notes are part of the requestor's personnel file.

To the extent that notes taken by appraisers actually become part of the documentation required by the State Board of Education administrative regulation, they will fall squarely within the holding of Open Records Decision No. 327. The notes will have been taken by

the appraisers in their capacities as supervisors of the employees, they will become part of the school's records, and the information contained therein will constitute "information relevant to the [teacher's] employment relationship." But even if the notes do not become an actual part of this documentation, we believe that they may still be characterized as "information . . . assembled . . . by [the school district] pursuant to law or ordinance or in connection with the transaction of official business" within the meaning of section 3(a) of the Open Records Act. Unlike the notes taken by the committee members involved in Open Records Decision No. 77, which were neither "required" nor "controlled" by the university, these notes will have been taken during an evaluation process required by school district policy or by state law, if not both. They will have been taken by persons who have independent authority in the evaluation process and whose roles in that process will not end when the evaluation is completed.

For all of these reasons, we conclude that notes taken by appraisers during their evaluation of school district instructional personnel are within the scope of the Open Records Act.

This does not, however, mean that these notes must be disclosed to teachers at their request. In your request letter, you stated:

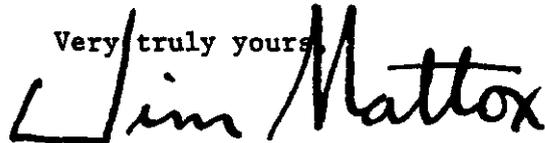
[W]e believe that if these notes are indeed public records, that they fall under [section 3(a)(11) of the act]. We also believe they are covered by section 3(a)(2), information in personnel files, the disclosure of which would constitute an invasion of personal privacy. The latter exception would protect these records from being released to anyone other than the employee involved.

Section 3(a)(11) authorizes governmental bodies to withhold "advice, opinion and recommendation" contained in intra-agency memoranda. Austin v. City of San Antonio, 630 S.W.2d 391, 394 (Tex. App. - San Antonio 1982, writ ref'd n.r.e.). Notes taken by appraisers consist almost exclusively of advice, opinion and recommendation; to the extent that they do, they may be withheld under section 3(a)(11), even from the teacher who is the subject of the notes. See, e.g., Open Records Decision No. 288 (1981) (governmental employees have no "special right of access" to information in their personnel files, and personnel file information within a section 3(a) exception may be withheld from anyone, including the employee who is the subject of the file).

In summary, the notes at issue here are within section 3(a) of the Open Records Act, but they may be withheld, even from the subjects of the notes, to the extent that they contain "advice, opinion and

recommendation." This information may, however, simply consist merely of objective observations of facts and events. If so, it may not be withheld under section 3(a)(11). You have not indicated that any information in these notes may not be characterized as advice, opinion or recommendation, and we therefore need not consider whether any other section 3(a) exception might apply to these notes.

Very truly yours,

A handwritten signature in black ink that reads "Jim Mattox". The signature is written in a cursive style with a large, prominent "J" and "M".

J I - M M A T T O X  
Attorney General of Texas

JACK HIGHTOWER  
First Assistant Attorney General

MARY KELLER  
Executive Assistant Attorney General

RICK GILPIN  
Chairman, Opinion Committee

Prepared by Jon Bible  
Assistant Attorney General