



**THE ATTORNEY GENERAL
OF TEXAS**

July 9, 1987

**JIM MATTOX
ATTORNEY GENERAL**

Mr. J. Robert Giddings
Office of General Counsel
University of Texas System
201 West 7th Street
Austin, Texas 78701

Open Records Decision No. 469

Re: Whether information regarding an investigation into the University of Texas Athletic Department is subject to disclosure under the Open Records Act, article 6252-17a, V.T.C.S.

Dear Mr. Giddings:

You have received a request under the Open Records Act, article 6252-17a, V.T.C.S., for documents concerning the Athletic Department of the University of Texas. You believe that two items of information sought by the requestor should be excepted from public disclosure, and have requested our decision on their availability under the Open Records Act.

The first item consists of materials relating to an investigation of the performance and possible wrongdoing of an employee of the athletic department. Open Records Decision No. 447 (1986) referred to this matter, but postponed addressing it at that time.

You state that materials on the investigation of the university employee have been turned over to the Travis County District Attorney in connection with an investigation being conducted by that office. A letter from the district attorney states that the employee pled guilty to the offense of Tampering with a Governmental Record, was sentenced, and has made restitution for the amount appropriated by use of the fraudulent governmental record. He has also repaid certain other amounts under investigation. The district attorney states that other matters involving the employee are still under investigation. He concludes that information furnished by the university relates to criminal litigation which may be initiated by the state. In an earlier letter on this subject, the district attorney wrote that he has determined that these materials should be withheld pursuant to section 3(a)(3) of the Open Records Act, the litigation exception. His subsequent letter shows that this determination still applies to the records turned over to his office.

Section 3(a)(3) of the Open Records Act permits a governmental body to except from public disclosure:

(3) 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. . . .

V.T.C.S. art. 6252-17a, §3(a)(3).

Open Records Decision No. 121 (1976) considered whether the University of Texas had to grant access to financial records which were being reviewed by the district attorney in connection with pending criminal charges. The decision determined that the information related to litigation of a criminal or civil nature to which the state might be a party, and that section 3(a)(3) of the Open Records Act would except it from public disclosure if the district attorney concluded that the information should not be released. See also Open Records Decision No. 141 (1976). Based on the reasoning of Open Records Decision No. 121, we agree that materials in the custody of the district attorney are excepted from public disclosure by section 3(a)(3) of the Open Records Act. Moreover, section 3(e) of the Open Records Act provides that the state is considered to be a party to litigation of a criminal nature until the applicable statute of limitations has expired or until the defendant has exhausted all appellate and post-conviction remedies in state and federal court.

You have also been asked to provide copies of reports filed with the Southwest Conference or the National Collegiate Athletic Association concerning University of Texas football players using complimentary passes to games in 1985. The documents you submit in response to this request consist of two letters from the Athletic Department at the University of Texas at Austin to the National Collegiate Athletic Association (NCAA) regarding the student athlete pass list for football games. Lists giving the names of student athletes who improperly identified designees for their complimentary admissions are attached to the letters.

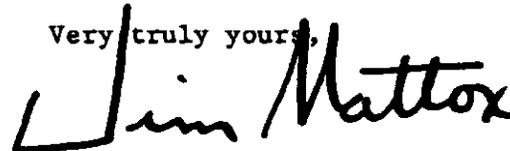
You do not claim that any exception to disclosure applies to the two transmittal letters. You believe, however, that the lists of student athletes attached to the letters are excepted from public disclosure by the Family Educational Rights and Privacy Act of 1974. This provision of federal law, which is incorporated by section 14(e) of the Open Records Act, provides that no federal funds shall be provided to educational institutions which have a policy of releasing education records of students without the student's consent, or the parent's consent if the student is a minor and attending elementary or secondary school. 20 U.S.C. §1232g(b), (d) (1982).

Open Records Decision No. 447 (1986) concluded that section 14(e) of the Open Records Act applied to information about identifiable student athletes found in correspondence from the University of Texas Athletic Department to the NCAA. Such information constituted "education records" within the federal act and thus could not be released without the student's consent. See also V.T.C.S. art. 6252-17a, §3(a)(14). Open Records Decision No. 447 is dispositive of the present request. Section 14(e) of the Open Records Act prevents the disclosure of the lists of names of student athletes. However, the transmittal letters which contain no information about identifiable students must be disclosed.

S U M M A R Y

Information furnished the district attorney by the University of Texas which he states is related to criminal litigation that the state may initiate is protected from public disclosure by section 3(a)(3) of the Open Records Act. The federal Family Educational Rights and Privacy Act, as incorporated by section 14(e) of the Open Records Act, prohibits the public disclosure of the names of University of Texas student athletes who are listed in Athletic Department records as having improperly identified designees for their complimentary admissions to games.

Very truly yours,



J I M M A T T O X

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