



**THE ATTORNEY GENERAL  
OF TEXAS**

**JIM MATTOX  
ATTORNEY GENERAL**

February 12, 1990

Mr. E. T. Lon Luty  
Superintendent  
Pasadena Independent  
School District  
P.O. Box 1779  
Pasadena, Texas 77501

Open Records Decision No. 538

Re: Whether teacher appraisals/  
evaluations are protected from re-  
quired public disclosure by sec-  
tion 3(a)(11) of article 6252-17a,  
V.T.C.S. (RQ-1737)

Dear Mr. Luty:

You have advised us that the Pasadena Independent School District has received a request for the evaluations made in selecting candidates for two administrative positions in the school district. A candidate for the two positions asked for copies of the rating sheets used to screen the finalists for the positions. The sheets for one position consist of a series of characteristics to be evaluated on a scale of 1 to 4. The sheets for the other position appear to consist of the evaluators' numerical responses to a series of characteristics or questions, and the names of the evaluators for this position appear on the rating sheets. Three evaluators screened candidates for the first position, while five evaluators screened candidates for the second position. The evaluations in question here were made by Pasadena I.S.D. personnel, pursuant to district policy, for the purpose of making a selection among candidates for administrative positions within the district. No purely factual information about the candidates appears on the evaluations. Thus, the information in question consists of advice, opinion, or recommendation to be used in the district's deliberative process. You claim that these rating sheets are excepted from disclosure by section 3(a)(11) of the Open Records Act.

We agree. Our reasoning is as follows:

Section 3(a)(11) excepts from public disclosure "inter-agency or intra-agency memorandums or letters which would not be available by law to a party in litigation with the agency." It is well established that the purpose of section 3(a)(11) is to protect from public disclosure

advice, opinion, and recommendation used in the decisional process within an agency or between agencies. This protection is intended to encourage open and frank discussion in the deliberative process. See, e.g., Austin v. City of San Antonio, 630 S.W.2d 391, 394 (Tex. App. - San Antonio 1982, writ ref'd n.r.e.); Attorney General Opinion H-436 (1974); Open Records Decision No. 470 (1987).

In Attorney General Opinion JM-36 (1983), this office stated that the student records exception to the Open Records Act, V.T.C.S. art. 6252-17a, § 3(a)(14), protects individualized student evaluations of faculty members if the evaluations identify individual students. That opinion went on to state that, under certain circumstances, such evaluations might also be withheld under the inter-agency or intra-agency memoranda exception. Id. § 3(a)(11). The question of whether the evaluations identified individual students was not discussed in Attorney General Opinion JM-36 with respect to its analysis of the applicability of section 3(a)(11). However, in Open Records Decision No. 464 (1987), Attorney General Opinion JM-36 is cited as holding that such individualized evaluations were protected by section 3(a)(11).

Open Records Decision No. 464 went on to state the following:

For similar reasons, the declarative statements with a letter response . . . must also be released. Although these responses may reflect the subjective opinion of the evaluator, their release will not impair the deliberative process at the university because the questions are anonymous. As indicated, the purpose of exception 3(a)(11) is to encourage open and frank discussion in the deliberative process. Information may therefore be withheld under section 3(a)(11) if release of the information would impair the government's ability to obtain the information in the future. [Citations omitted.] Release of anonymous standardized responses will not reveal the identity of the evaluator and, therefore, will not prevent evaluators from providing similar opinions in the future. . . .

The narrative responses . . . present a different question. Because release of these responses could identify the individuals

making the evaluations and recommendations, these responses may be withheld under section 3(a)(11). Although the narrative responses are anonymous, releasing them could reveal the identity of the evaluators. For example, some of the evaluations are handwritten and some criticize attitudes which may apply only to some faculty members.

Later, expanding on this analysis, Open Records Decision No. 482 (1987) stated:

The evaluations before us contain subjective responses to declarative statements and opinions of various observers. They are signed by the raters. If disclosure of these reports with the identities of the raters deleted would not enable anyone to ascertain those identities, the reports must be disclosed with the identifying material deleted. As Open Records Decision No. 464 explained, section 3(a)(11) insures the ability of a governmental body to obtain candid opinions, evaluations, and recommendations so that its deliberative processes will be frank and effective. That goal is not defeated where the disclosure of evaluations, even entirely subjective ones, would not enable the identity of the evaluator to be ascertained.

As can be seen, Open Records Decision Nos. 464 and 482 seem to have developed an analysis of section 3(a)(11) in which the test for protection under section 3(a)(11) is whether the author of the advice, opinion, or recommendation in question can be identified.

We are of the opinion that such a test is inapposite to the purpose of section 3(a)(11). The exception for advice, opinion, and recommendation protects the information itself, not merely the author of the information. The assertion that anonymity of authorship will ensure frank and open deliberations seems contrary to common experience. An evaluator may well avoid frankness if his opinion is to be made public, even if he remains anonymous.

Open Records Decision Nos. 464 and 482 both dealt with personnel evaluations. Further, it is not apparent why such evaluations should be held to a standard different from

that applied to other materials protected by section 3(a)(11).

In your letter you state:

There is no question that the requestor would be able to identify the evaluators after reviewing the rating sheets. The requestor, like other employees of the District would have access to these materials, could easily recognize the handwriting of the evaluators. The identity of the evaluators may be revealed by the size of the numbers listed on the rating sheets, the penmanship used in writing the applicants' names on the rating sheets, and even by the way the evaluators circle numbers on the rating sheets. There is no doubt that the requestor, who has worked in the District for years, has seen the handwriting of each evaluator who completed rating sheets. In fact, she probably has documents in her possession which were handwritten by at least some of the evaluators who have completed rating sheets which are the subject of this request. Therefore, it is unquestionable that the rating sheets are not anonymous. The release of the rating sheets would discourage administrators who participate in the screening process from providing similar opinions in the future, and have a detrimental effect on the deliberative process.

This illustrates the difficulty of applying an anonymity analysis to section 3(a)(11). Whether a document is anonymous often depends on who is looking at it, yet the officer for public records must treat each request for information uniformly, without regard to the position or occupation of the person making the request. V.T.C.S. art. 6252-17a, § 5(c).

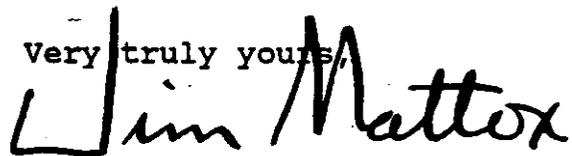
Therefore, we are of the opinion that the protection from public disclosure found in section 3(a)(11) extends to the information itself. Whether the identity of the author of such information is discernible does not determine whether the information is protected. As the information in question here is within that category of information protected from public disclosure by section 3(a)(11), you may withhold it.

Open Records Decision Nos. 464 and 482 are expressly overruled to the extent of any conflict herewith.

S U M M A R Y

Whether the identity of the author of advice, opinion, or recommendation protected by section 3(a)(11) of the Open Records Act is discernible is not determinative of whether the information is protected. The exception from public disclosure found in section 3(a)(11) protects the information itself. Open Records Decision Nos. 464 and 482 are overruled to the extent of any conflict.

Very truly yours,



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