



**THE ATTORNEY GENERAL  
OF TEXAS**

**JIM MATTOX  
ATTORNEY GENERAL**

January 12, 1989

Nancy S. Footer  
Associate University Counsel  
University of Houston System  
4600 Gulf Freeway, Suite 425  
Houston, Texas 77023

Dear Nancy S. Footer:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 5021; this decision is OR89-020.

Under the Open Records Act, all information held by governmental bodies is open unless the information falls within one of the act's specific exceptions to disclosure. The act places on the custodian of records the burden of proving that records are excepted from public disclosure. If a governmental body fails to claim an exception, the exception is ordinarily waived unless the information is deemed confidential under the act. See Attorney General Opinion JM-672 (1987). The act does not require this office to raise and consider exceptions that you have not raised.

The University of Houston has received a request from Ms. Karen Sjoquist, a student, for a letter sent by Dr. Charles Peavy to Dr. Terrell Dixon, and a letter of reprimand sent to Dr. Peavy by Dr. Dixon. You ask whether these letters are protected from disclosure by section 3(a)(11) of the Open Records Act.

Exception 3(a)(11) protects

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.

Section 3(a)(11) protects advice and opinion on policy matters in order to encourage open and frank discussion between subordinates and supervisors in the deliberative

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process. Open Records Decision No. 464 (1987). The test under section 3(a)(11) is whether inter-agency or intra-agency information consists of advice, opinion, or recommendation that is used in the deliberative process. Id.

The letters in question fall within the 3(a)(11) exception. They are inter-agency materials and were obviously used in the decision-making process as it concerned Dr. Peavy's career. Thus, they are excepted from disclosure.

Section 3(a)(11) does not permit the withholding of facts or written observations of facts found within inter-agency or intra-agency materials. Open Records Decision Nos. 450 (1986); 308 (1982). However, facts that are intertwined with material which may be withheld are exempt from disclosure if they are not severable. Open Records Decision Nos. 298, 295 (1981). In the letters you submitted, the facts were either intertwined with excepted information, or were not objective observations of facts, but opinions as to how events occurred. For this reason, the letters may be withheld in their entirety.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR89-020.

Yours very truly,

*Open Government Section*  
*of the Opinion Committee*

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of the Opinion Committee  
Prepared by Jennifer S. Riggs  
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JSR/BLS/bra

Ref: Id# 5021

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