



**THE ATTORNEY GENERAL  
OF TEXAS**

**JIM MATTOX  
ATTORNEY GENERAL**

February 23, 1989

Mr. James Bond  
Deputy Chancellor  
Legal Affairs  
Texas A&M University  
College Station, Texas 77843-1230

Dear Mr. Bond:

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# 5539; this decision is OR89-67.

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.

Texas A & M University received a request from Mr. John Sparks, Director of Special Projects at WFAA-TV in Dallas, Texas, for the "termination contract negotiated and executed by Texas A & M University Athletic Director Jackie Sherrill on or about December 12, 1988." You have submitted a copy of the final agreement made between the university and Jackie Sherill on December 12, 1988. You wish to withhold this agreement from public disclosure, claiming protection under section 3(a)(1) of the Open Records Act.

Section 3(a)(1) of the Open Records Act protects from public disclosure "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." The primary purpose of this section is to protect privacy interests. You claim that the agreement should be excepted from public disclosure because its release would violate the

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common-law privacy right against public disclosure of private facts.

To withhold information under this category of common-law privacy, the information must contain highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and the information must be of no legitimate concern to the public. Industrial Found. of the South v. Texas Indus. Accident Bd., 540 S.W.2d 668, 683-685 (Tex. 1976) cert denied 430 U.S. 930 (1977). The information must meet both parts of the test in order to be protected from release by section 3(a)(1). Id.

Although the information contained in the agreement undoubtedly contains information about Mr. Sherrill's private affairs, its contents are not sufficiently intimate or embarrassing to trigger this exception. Additionally, the information concerning a payment of public funds is definitely of legitimate interest to the public. Further, sections 6(2) and 6(3) expressly designate this type of information public. See Open Records Decision Nos. 518 (1989); 514 (1988). For these reasons, the termination agreement must be released in its entirety.

The agreement, numbered paragraph 8, also purports to bind the parties to the agreement to confidentiality. Governmental bodies cannot by contract designate as confidential information that is public under the Open Records Act. Attorney General Opinion JM-672 (1987).

The termination agreement was also included in larger requests by the Bryan-College Station Eagle, the Dallas Times Herald, and the Dallas Morning News. Their other requests will be dealt with in a subsequent ruling, but this document should be released to them at this time as well as to WFAA-TV.

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 OR89-67.

Yours very truly,

Open Government Section  
of the Opinion Committee *JR*

Open Government Section  
of the Opinion Committee  
Prepared by Jennifer S. Riggs  
Chief, Open Government Section

JSR/BLS/bc

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cc: Mr. John Sparks-WFAA-TV  
Mr. W. O. Cawley- Bryan-College Station Eagle  
Mr. Daniel J. Langendorf- Dallas Times Herald  
Mr. Doug Bedell- Dallas Morning News

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