



THE ATTORNEY GENERAL  
OF TEXAS

March 14, 1989

JIM MATTOX  
ATTORNEY GENERAL

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Dear Mr. Beck:

This will acknowledge receipt of your letter of February 22, 1989 clarifying the position of the Midland Independent School District (MISD) concerning the availability of teacher appraisal notes in its possession. Your letter has been assigned ID# 5714. This decision is OR89-83.

Your letter indicates the Open Records Act, article 6252-17a, V.T.C.S., does not require that the MISD provide to requestors copies of the observation notes used in the MISD teacher appraisal process because, pursuant to section 4 of the act, the requests were not directed to the "custodian of information." In this case, the requests were made to the appraisers at the conclusion of the appraisal period.

Section 5(a) of the act states that "[t]he chief administrative officer of the governmental body shall be the custodian of public records." You note that the Superintendent of Schools is the custodian of information for the school district. Because no requests for the information at issue were received by the Superintendent's office, you assert that a "proper" request for the information was not made. Your assertion is incorrect.

The purpose of sections 4 and 5 of the act is to place a legal duty on the custodian of information, defined as the governmental body's chief administrative officer, to produce public information. Open Records Decision No. 497 (1988). The purpose of sections 4 and 5 is not to require that a requestor actually name the chief administrative officer.  
Id.

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The language of section 5 assumes that the custodian of information will not be processing personally all requests for public records. Subsection (a) of section 5 makes the custodian responsible for ensuring that "public records are made available for public inspection and copying." By referring to the custodian's "agent who controls the use of public records," subsection (b) of section 5 assumes that the custodian will delegate the responsibility for processing open records requests. Due to the ordinary delegation of responsibility in governmental bodies, it is unlikely that routine requests, even if they name the chief administrative officer, will reach the chief administrative officer.

Sections 4 and 5 of the Open Records Act place an implicit duty on chief administrative officers to instruct their staffs about compliance with the Open Records Act and to make public the identity of persons within the governmental body to whom an open records request should be directed. Id. at 3; see generally Open Records Decision No. 342 (1982).

Your letter also indicates that that the MISD will consider adopting policy concerning the length of time appraisal notes may be maintained on file in the school district in accordance with the Open Records Act. Please be advised that section 12 of the act makes it a criminal offense to wilfully destroy, alter, or remove public records except as provided by law. At present, the act does not specify the length of time a governmental body may preserve documents deemed public under the act. Please confer with the local records division of the State Library and Archives Commission to determine the length of time such records should be retained. Of course, once a request is received, records may not be destroyed even if within an authorized destruction time.

If you have questions about this matter, please refer to OR89-83.

Yours very truly,

*Open Government Section*  
*of the Opinion Committee*

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

JSR/FAF/bc

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