



**THE ATTORNEY GENERAL  
OF TEXAS**

**JIM MATTOX  
ATTORNEY GENERAL**

September 15, 1989

Mr. Donald J. Walheim  
Schulman, Walheim, Beck & Heidelberg, Inc.  
Attorney for Edgewood ISD  
420 South Main Avenue  
San Antonio, Texas 78204

Dear Mr. Waldheim:

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# 6737; this decision is OR89-276.

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 Edgewood Independent School District (the district) received an open records request for records prepared by teachers and supervisors employed by the district. The records contain information concerning the manner in which one of the district's counselors conducts a counseling program in relation to parents and students. The counselor, who is also the requestor, filed a grievance against the district complaining of the actions taken by the school superintendent and members of the board of trustees with respect to the district's investigation offer. On behalf of the district, you argue that you may withhold these records from the requestor pursuant to several sections of the Open Records Act, specifically sections 3(a)(1), 3(a)(2), 3(a)(3), 3(a)(9) and 3(a)(11).

Mr. Donald J. Walheim  
September 15, 1989  
Page 2

The Open Records Act makes public "all information collected, assembled or maintained by governmental bodies pursuant to law or ordinance in connection with the transaction of official business." Information may be withheld only if it falls within one of the act's specific exceptions. The information at issue concerns documents gathered in an investigation about which the requestor/employee is the subject. The requestor seeks this information, presumably, to aid in defense of any charges or allegations stemming from the investigation.

The attorney general has previously determined that a person receiving benefits from a public institution may have a due process right, aside from the Open Records Act, to review information in his file when it is used as a basis for a determination of his entitlement to benefits. Attorney General Opinion H-249 (1974); see Attorney General Opinion H-626 (1975). In Greene v. McElroy, 360 U.S. 474 (1959), a case involving the loss of security clearance, the Supreme Court ruled:

Certain principles have remained relatively immutable in our jurisprudence. One of these is that where governmental action seriously injures an individual, and the reasonableness of the action depends on fact findings, the evidence used to prove the Government's case must be disclosed to the individual so that he has an opportunity to show that it is untrue. (Emphasis added.)

360 U.S. at 496. See also Goldberg v. Kelly, 397 U.S. 254 (1970) (welfare recipients must be given an opportunity to confront witnesses relied on by a public agency in the determination of entitlement to welfare benefits).

We believe that similar reasoning may be applied to require that a party, the subject of an investigation, be granted access to the records forming the basis of a determination involving that party. For this reason we do not address the exceptions to disclosure which you have raised. You must release to the employee all investigation records used to make a determination concerning her job performance.

Mr. Donald J. Walheim  
September 15, 1989  
Page 3

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 OR89-276

Yours very truly,

*Open Government Section  
of the Opinion Committee*

Open Government Section  
of the Opinion Committee  
Approved by David A. Newton  
Assistant Attorney General

DAN/FAF/bc

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ID# 7086

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