



**THE ATTORNEY GENERAL  
OF TEXAS**

September 26, 1989

**JIM MATTOX  
ATTORNEY GENERAL**

Mr. W. O. Shultz II  
General Attorney and  
Associate General Counsel  
The University of Texas System  
201 West 7th Street  
Austin, Texas 78701

Dear Mr. Shultz:

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# 7392; this decision is OR89-319.

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 Texas System received a request for copies of a number of documents related to a sexual harassment claim made against a university supervisor by one of the supervisor's employees. You state that the university released all of the documents except for the 11-page detailed statement made by the complainant. You contend that the false light privacy doctrine protects the statement from required public disclosure.

Section 3(a)(1) of the Open Records Act protects from required public disclosure:

information deemed confidential by law,  
either Constitutional, statutory, or by  
judicial decision.

Although this exception covers a broad range of information, its primary purpose is to protect privacy interests.

Section 3(a)(1) also protects "information made confidential" by common-law privacy and constitutional privacy. The Texas Supreme Court in Industrial Found. of the South v. Texas Indus. Accident Bd., 540 S.W.2d 668 (Tex. 1976), cert. denied, 430 U.S. 930 (1977), set forth the primary test for the privacy protection applicable under section 3(a)(1). Information may be withheld under section 3(a)(1) only if the information contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and if the information is of no legitimate concern to the public. See 540 S.W.2d at 683-85. A governmental body must also withhold information under section 3(a)(1) on the basis of "false light" privacy if it finds that release of the information would be highly offensive to a reasonable person, that public interest in disclosure is minimal, and that serious doubt exists about the truth of the information. Open Records Decision No. 438 (1986).

You assert that release of the information would place several persons in a "false light" and note that the individual assigned to investigate the matter "failed to find sufficient evidence to support the truth" of the allegations. We agree that release of some of the information at issue to the public could place the individual complained of in a false light. Further, some of the information about nonwork-related episodes is protected by common-law privacy as the public, as a general rule, has no legitimate interest in nonwork-related events. This conclusion against the public availability of the statement does not, however, resolve your request.

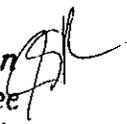
In Open Records Decision No. 481 (1987), this office held that privacy rights recognized in section 3(a)(1) of the act cannot be used to withhold information from the individuals whose privacy rights are at issue. The requestor here is the individual against whom the claim of sexual harassment was lodged. Consequently, the statement must be released to the requestor. See also, art. 6252-17a, § 3B.

Because case law and prior published open records decisions resolve your request, we are resolving this matter

Mr. W. O. Shultz II  
September 26, 1989  
Page 3

with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR89-319.

Yours very truly,

*Open Government Section*  
*of the Opinion Committee* 

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

JSR/bc

cc: Mr. James A. Kosub  
Kosub & Gaul  
Attorneys  
2300 Alamo National Building  
105 South St. Mary's  
San Antonio, Texas 78205

Ref.: ID# 7392