



# The Attorney General of Texas

December 22, 1978

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Mr. Bowen L. Florsheim  
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School District  
4050 First National Bank Building  
Dallas, Texas 75202

Open Records Decision No. 219

Re: Whether report regarding  
purchasing procedures and prac-  
tices is public.

Dear Mr. Florsheim:

You request our decision pursuant to section 7 of article 6252-17a, V.T.C.S., the Texas Open Records Act. You have received requests for inspection of a report of a special audit conducted by Price Waterhouse & Co. for the Dallas Independent School District concerning the practices and procedures for purchases of certain materials. It is your position that the information is excepted from required public disclosure under sections 3(a)(1), 3(a)(3), or 3(a)(11).

You contend that section 3(a)(1), which excepts information made confidential by law, is applicable by virtue of the right of privacy as recognized by the court in Industrial Foundation of the South v. Texas Industrial Accident Board, 540 S.W.2d 668 (Tex. 1976). It is your contention that the report raises questions as to the propriety of the conduct of identifiable individuals which might be embarrassing to them, and that therefore the information should not be disclosed to the public.

In Turner v. Reed, 538 P.2d 373, 381 (Ore. App. 1975), the court considered the contention that disclosure of certain information might prove embarrassing to public officials. The court held as follows:

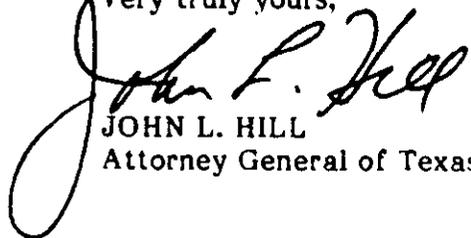
We now hold that [this] category [of documents] is per se available for public inspection, specifically those public records where the only interest in confidentiality is to protect public officials from criticism of the manner in which they have discharged their public duties. Citizens are entitled to inspect public records to learn what their government is doing — this means learning of government's possible shortcomings, not just governments successes.

The principle stated by that court is the same as expressed in section 1 of the Texas Open Records Act, and is applicable here. The information is not excepted by section 3(a)(1) on the basis of a privacy interest in avoiding embarrassment which might arise by implication from the way in which government business is conducted.

You contend that the information is excepted under section 3(a)(3) as "information relating to litigation of a criminal or civil nature . . . to which the . . . political subdivision is, or may be, a party. . . ." It is not shown that any civil or criminal litigation is pending. We have previously held that the mere possibility of litigation is not sufficient to warrant the withholding of information. Open Records Decision Nos. 178 (1977); 80 (1975); 29, 27 (1974). Nothing more than a mere possibility is shown to exist here. Section 3(a)(3) is not applicable.

You contend that the information is excepted from disclosure under section 3(a)(11) as an intra-agency memorandum making policy recommendations. The bulk of the report is factual, and thus not excepted under this section. Two pages of the report are entitled Recommendations to Improve Procedures Surrounding the Solicitation of Bids and Award of Contracts. These two pages do contain the type of information which may be withheld under section 3(a)(11). Open Records Decision No. 213 (1978). It is our decision that the two pages of recommendations are excepted from required public disclosure under section 3(a)(11). The balance of the report is public.

Very truly yours,



JOHN L. HILL  
Attorney General of Texas

APPROVED:



DAVID M. KENDALL, First Assistant



C. ROBERT HEATH, Chairman  
Opinion Committee

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