



The Attorney General of Texas

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Mr. W. C. Kirkendall
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Open Records Decision No. 332

Re: Whether letters concerning
teacher's performance written by
parents to school trustees are
available to the teacher

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An Equal Opportunity/
Affirmative Action Employer

Dear Mr. Kirkendall:

You have requested our decision under the Open Records Act, article 6252-17a, V.T.C.S., as to whether parents' letters to school trustees regarding a teacher's performance are available to the teacher. We note initially that section 3(a)(2) of the act does not furnish a public employee with a "special right of access." Open Records Decision No. 288 (1981). Thus, except for information which would be unavailable to the public because of the employee's right of personal privacy under section 3(a)(2), the availability of these records to the employee is identical to their availability to the public.

In early June 1982, a group of parents of students attending Seguin High School submitted letters to individual members of the Board of Trustees of the Seguin Independent School District. The letters complained about various policies and procedures employed by a particular teacher. The board discussed the letters in executive session on July 6, 1982, but took no action thereon. The teacher has requested copies of the letters so that she may submit a written response to the allegations. You first contend that, "because the letters were delivered to the individual board members at their homes for informational purposes only," and "have not been made a part of [the teacher's] personnel file," they do not constitute information under section 3(a) of the Open Records Act, which makes public:

[a]ll information collected, assembled, or maintained by governmental bodies pursuant to law or ordinance or in connection with the transaction of official business.

Apparently, you are contending that individual members of the board of trustees are not proper custodians of the teacher's personnel file and that, as a result, the letters are not properly a part of her personnel file. You indicate, however, that the teacher "has been shown copies of these letters by her principal." Since the teacher's

direct supervisor, an individual who clearly has access to and control of her personnel file, was furnished copies of these letters, we cannot accept the contention that the letters now remain outside her personnel file. It has long been established that:

anything bearing upon qualifications for employment, employment and its terms, and separation from employment would constitute information relevant to the individual's employment relationship and be a part of a person's personnel file.

Open Records Decision No. 55 (1974). You do not contend that disclosure of the letters would constitute a "clearly unwarranted invasion of" the teacher's privacy. Thus, since we have determined that the letters are part of her personnel file, we conclude that they are not excepted from disclosure by section 3(a)(2) of the Open Records Act.

You also contend that the letters are excepted by section 3(a)(1), as "information deemed confidential by law," because they are "the private property of the members of the board of trustees." In Open Records Decision No. 77 (1975), this office said that the Open Records Act "does not reach the personal notes of an individual employee in his sole possession and made solely for his own use." The letters under consideration here, however, are not in the sole possession of the original recipients. Copies were made available to the principal of Seguin High School, and he in turn showed them to the teacher in question. In addition, the information was not "made solely for the use" of the individual trustees, but was instead furnished from an outside source. Under these circumstances, we do not believe the letters may fairly be said to constitute "the private property of the members of the Board of Trustees."

Finally, you suggest that the letters are excepted by section 3(a)(9) of the Open Records Act, as:

private correspondence and communications of an elected office holder relating to matters the disclosure of which would constitute an invasion of privacy.

Section 3(a)(9) appears to furnish a right of privacy only to "elected office holders," and not to their communicants. See Open Records Decision Nos. 241 (1980); 212 (1978). In our opinion, nothing in these letters could remotely be said to constitute an invasion of privacy of the members of the board of trustees.

Although you have not raised any issue under section 3(a)(14) of the Open Records Act, which relates to student records, section 14(e) of the act provides:

Nothing in this Act shall be construed to require the release of information contained in education records of any educational agency or institution except in conformity with the provisions of the Family Educational Rights and Privacy Act of 1974, as enacted by Section 513 of Public Law 93-380, codified as Title 20 U.S.C.A. Section 1232g, as amended. [hereafter the Buckley Amendment].

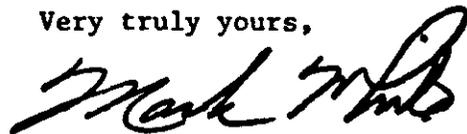
"Education records" is defined to include all records which:

(i) contain information directly related to a student; and (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.

20 U.S.C. §1232g(a)(4)(A). This office has frequently said that comments by identifiable students regarding a teacher or faculty member are excepted from disclosure by the Buckley Amendment, by incorporation into the Open Records Act. Open Records Decision Nos. 224 (1979); 206 (1978). The letters at issue here contain information "directly related to students," and, in our opinion, they are excepted from disclosure by the Buckley Amendment, whether written by the students themselves or by their parents. Where the student is less than 18 years of age and is attending an institution of secondary education, his parents stand in his place for purposes of the Buckley Amendment.

This exception may not be used to withhold each of the letters in their entirety, but only information which identifies students or parents. The district should delete all information contained therein to the extent "reasonable and necessary to avoid personally identifying a particular student in the class," Open Records Decision No. 206 (1978), and, in this instance, to the extent necessary to avoid personally identifying one or both parents of such a student. We have marked those portions of each letter which may be withheld. Since all personally identifiable information has been deleted, it is unnecessary that we consider whether any of the material may be withheld under section 3(a)(1), as information protected by a common law or constitutional right of privacy, or by the informer's privilege.

Very truly yours,



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