



The Attorney General of Texas

July 26, 1983

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Mr. Wade Adkins
City Attorney
1000 Throckmorton
Fort Worth, Texas 76102

Open Records Decision No. 390

Re: Availability to public of
investigative report on Educa-
tional Incentive Pay Program of
city of Fort Worth

1607 Main St., Suite 1400
Dallas, TX. 75201-4709
214/742-8944

Dear Mr. Adkins:

You have requested our decision under the Open Records Act, article 6252-17a, V.T.C.S., regarding the availability of an investigative report on the Educational Incentive Pay Program of the city of Fort Worth. The information at issue consists of two reports, and attachments. You suggest that portions of the material are excepted from disclosure by sections 3(a)(1), (2), (11), and (14) of the Open Records Act, which except:

4824 Alberta Ave., Suite 160
El Paso, TX. 79905-2793
915/533-3484

(1) information deemed confidential by law, either Constitutional, statutory, or by judicial decision;

1220 Dallas Ave., Suite 202
Houston, TX. 77002-6986
713/650-0666

(2) information in personnel files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. . . ;

806 Broadway, Suite 312
Lubbock, TX. 79401-3479
806/747-5238

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4309 N. Tenth, Suite B
McAllen, TX. 78501-1685
512/682-4547

(11) inter-agency or intra-agency memorandums or letters which would not be available to a party other than one in litigation with the agency; and

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200 Main Plaza, Suite 400
San Antonio, TX. 78205-2797
512/225-4191

(14) student records at educational institutions funded wholly, or in part, by state revenue;. . .

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In addition, 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. . . Title 20 U.S.C.A. Section 1232g, as amended.

We conclude that certain portions of the material may be withheld from disclosure under section 3(a)(11) of the Act, but that the remainder is required to be disclosed.

You first contend that both reports and the accompanying attachments contain information protected by a right of common law privacy under section 3(a)(1) or by employee privacy under section 3(a)(2). In our opinion, none of the information may be so characterized. You suggest, however, that some of the material may be excepted by "false light" privacy. In Open Records Decision No. 372 (1983), we said that:

a governmental body may withhold information on the basis of false light privacy, only if it finds, based upon the weight of evidence demonstrable to this office, that there is serious doubt about the truth of the information. In addition, the information must be highly offensive to a reasonable person and the public interest in disclosure must be minimal.

In your brief, you state:

There is insufficient evidence to permit the conclusion that the custodian of the information in fact entertains, or does not entertain serious doubts as to the truth of the information.

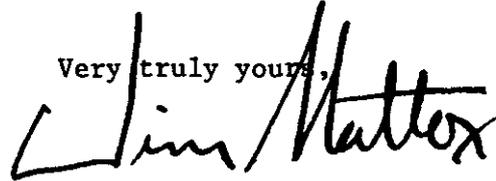
On the basis of the standard set forth in Open Records Decision No. 372, we must conclude that none of the information here is excepted from disclosure by false light privacy.

You also contend that all documents relating to college credit earned by the police officers under investigation are excepted by sections 3(a)(14) and 14(e). The Family Educational and Privacy Rights Act of 1974, 20 U.S.C., section 1232g (the Buckley Amendment), denies federal funds to any institution that releases personally identifiable "education records" to anyone but specified individuals. Education records are broadly defined as those records that "(1) [a]re directly related to a student, and (2) are maintained by an educational agency. . ." 45 C.F.R. section 99.3 (1976). See Open Records Decision No. 193 (1978). Since sections 3(a)(14) and 14(e) except documents relating to college credit only when such documents

are in the custody of an "educational agency" and since the city of Fort Worth is not an "educational agency" within the meaning of the Buckley Amendment, we conclude that the information at issue here is not excepted from disclosure by sections 3(a)(14) or 14(e).

As to your claim under section 3(a)(11), this provision has consistently been construed to except that material which consists of "advice, opinion and recommendation." See Open Records Decision Nos. 335, 331, 328 (1982). You have marked those portions of the reports and the attachments which you contend are excepted by section 3(a)(11). In our opinion, only one of those portions marked in Report No. 1, on page 4, and none of those marked in the attachments thereto may be so characterized. As to Report No. 2, those portions you have marked on pages 1, 8, 10, 12, 15, and 16 are excepted, but none of the marked portions on pages 17-46 may be withheld except for those we have marked on pages 30, 34, 36, 41 and 43. All of pages 47-56, labeled "conclusions" and "recommendations," may be withheld. As to the attachments to Report No. 2, only the following may be excepted: pages 5-9, and the marked yellow portions on pages 170, 172, 175, 184, 187, 188, 191, 201, 202, 210, 214, 215, 221, 227, 229, 237, 241, 242 and 247. No other portions of the attachments to Report No. 2 may be withheld.

Very truly yours,



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