



**THE ATTORNEY GENERAL  
OF TEXAS**

**JIM MATTOX  
ATTORNEY GENERAL**

January 9, 1989

Mr. W.N. Kirby  
Commissioner of Education  
Texas Education Agency  
1701 North Congress Avenue  
Austin, Texas 78701-1494

Dear Mr. Kirby:

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# 4939; this decision is OR89-011.

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.

Your letter to this office states:

The State Board of Education is directed by statute to require satisfactory performance on an examination of basic skills as a condition to admission into an approved teacher education program. Texas Education Code, Section 13.032(e). The Texas Higher Education Coordinating Board is directed by statute to prescribe a basic skills examination for diagnostic and remedial purposes and to determine a student's eligibility to take upper division courses at a public institution of higher education. Texas Education Code, Section 51.306. The two boards currently are developing a single examination to

be used to satisfy both statutes. This joint project is known as the Texas Academic Skills Program (TASP).

The Texas Education Agency received an open records request for certain information pertaining to the recent pilot test of the TASP examination. The current requestor of information is not asking for access to either the actual test items or to the identities of the students who took the pilot exam, both of which are protected from required public disclosure by sections 3(a)(21) and 3(a)(14), respectively. Instead, the requestor seeks general information about each of the test questions and about each of the students who took the exam.

You state that the requested information does not currently exist in a "complete" form; it is currently being corrected and verified by the private testing company under contract with the State Board of Education and the Coordinating Board to assist with the development of the examination. You do not contend that the requested information is protected from required public disclosure by any of the act's section 3(a) exceptions. You contend, however, that because the two boards have not adopted the examination and the preliminary performance standards, the field test information is not "complete" and that consequently you need not release these documents at this time pursuant to section 6(1) of the act.

Section 6(1) of the act provides that reports, audits, evaluations, and investigations made of, for, or by, governmental bodies are public information "upon completion." This section does not, however, imply that "incomplete" reports, audits, etc., are excepted from required disclosure. Open Records Decision No. 460 (1987). The purpose of section 6 is merely to illustrate some of the types of government-held information that are ordinarily public; section 6 is not meant to be an exhaustive list of public documents. The applicable test for required disclosure is two-fold: whether the requested information is collected, assembled, or maintained by a governmental body, and, if so, whether the information falls within one of the specific exceptions to disclosure under section 3(a) of the act. Id.

You state that you believe that the field test information is a report made of, for, and by governmental bodies, but you nevertheless failed to raise an applicable exception. You must, therefore, release the requested information that is in existence at this time. You may,

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however, include with the requested documents a disclaimer that the contents of the report have not yet been adopted by the State Board of Education or the Coordinating Board.

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 OR89-011.

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/RWP/bra

Copy to: Albert H. Kauffman  
Mexican American Legal Defense  
and Educational Fund  
314 East Commerce Street  
Suite 200  
San Antonio, Texas 78205

Ref: ID# 4939