



THE ATTORNEY GENERAL  
OF TEXAS

JIM MATTOX  
ATTORNEY GENERAL

January 24, 1989

Mr. Donald S. Glywasky  
County Legal Department  
4127 Shearn Moody Plaza  
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Galveston, Texas 77550-1454

Dear Mr. Glywasky:

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# 5043; this decision is OR89-37.

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 Galveston County Juvenile Probation Department received an open records request for the personnel file of the Superintendent of the Youth Services Center. You contend that section 3(a)(2) of the act protects from required public disclosure portions of the personnel file that contain information relating to allegations of sexual harassment made in 1979 against the superintendent. Among the documents you seek to withhold are notes made by the superintendent's supervisor about the allegations, information pertaining to an Equal Employment Opportunity Commission (EEOC) charge of discrimination against the superintendent that was later determined to be unfounded, and an issue of the Employee Discrimination Reporter.

Section 3(a)(2) protects

information in personnel files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; provided, however, that all information in personnel files of an individual employee within a governmental body is to be made available to that individual employee or his designated representative as is public information under this Act.

The test for section 3(a)(2) protection is the same as that for information protected by common-law privacy under section 3(a)(1). Texas courts recognize four categories of common-law privacy: 1) appropriation, 2) intrusion, 3) public disclosure of private facts, and 4) false light in the public eye. See Industrial Foundation of the South v. Texas Industrial Accident Board, 540 S.W.2d 668, 682 (Tex. 1976), cert. denied 430 U.S. 931 (1977). Information falls within the category of false light privacy only if its release would be highly offensive to a reasonable person, the public interest in disclosure is minimal, and there exists serious doubt about the truth of the information. Open Records Decision No. 438 (1986).

In this instance, although the superintendent insists that all of the allegations are false, you have expressed doubts only as to the basis of the charge that resulted in the EEOC investigation. Because the EEOC determined that these charges were unfounded, only the information directly pertaining to the EEOC charges may be withheld pursuant to false light privacy. We note, however, that some portions of the file contain statements by the superintendent and other information that indicates that at least some of the other complaints were valid. Unless these portions are protected by some other aspect of common-law privacy, they must be released.

To be categorized as public disclosure of private facts, the information must contain highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and the information must be of no legitimate concern to the public. Industrial Foundation, 540 S.W.2d 668, at 683-85. Although details of sexual harassment may indeed be "highly embarrassing" to both the accused and

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accuser, this office has previously held that the public "clearly has a legitimate interest in knowing the details of an apparently well-founded accusation of [sexual] misconduct levelled against a city supervisor" in an employment setting. Open Records Decision No. 438 (1986).

Admittedly, the remoteness of the accusations in question when coupled with the fact that the file contains no record of subsequent allegations of harassment may to some extent lessen the public interest in this information; these factors do not, however, preclude legitimate public concern. This office interprets section 1 of the Open Records Act, which provides "the provisions of this Act shall be liberally construed," to mean that we should err on the side of disclosure. We also note that ancillary issues, such as how the administration addressed the allegations, are of public interest. See, e.g., Open Records Decision No. 438. Consequently, you must release this information.

Finally, you contend that the issue of the Employee Discrimination Reporter should be withheld because "it does not belong in [the superintendent's] personnel file in the first place and also because it alludes to the allegations made against him." The contents of this publication contain no information that in any way refers to the superintendent; it does not, therefore, come within the protection of section 3(a)(2). We note, however, that federal law prohibits the reproduction of copyrighted materials. See 17 U.S.C. §§ 106, 107 (1988); you must, however, allow the requestor access to a copy of this document if he wishes. See Attorney General Opinion MW-307 (1981).

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 OR89-37.

Yours very truly,

*Open Government Section  
of the Opinion Committee* 

Open Government Section  
of the Opinion Committee  
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JSR/RWP/bc

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