



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

March 20, 1989

Mr. Roger D. Hepworth
Henslee, Ryan & Groce
3432 Greystone Drive, Suite 200
Austin, Texas 78731

Dear Mr. Hepworth:

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# 5568; this decision is OR89-92.

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 Spearman Independent School District received an open records request for all personnel records of a particular teacher. We note that you failed to submit to this office a copy of the letter requesting this information. In the future, please send a copy of the request letter as well as copies of the records at issue. You state that the district has released some of these records to the requestor; you contend, however, that section 3(a)(2) of the Open Records Act excepts other records from required public disclosure.

Section 3(a)(2) protects information in personnel files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. The test for

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section 3(a)(2) protection is the same as that for information protected by common-law privacy under section 3(a)(1). Section 3(a)(1) protects "information deemed confidential by law, either Constitutional, statutory, or by

judicial decision," including the common-law right to privacy. Industrial Found. of the South v. Texas Indus. Accident Bd., 540 S.W.2d 668 (Tex. 1976), cert. denied 430 U.S. 931 (1977).

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. In the context of open records questions, the last two of these arise most frequently. The Texas Supreme Court in Industrial Foundation set forth the primary test for "the public disclosure of private facts" privacy protection applicable under section 3(a)(1). Id. at 683-85. Information may be withheld under this category of privacy only if the information contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and if the information is of no legitimate concern to the public. Id. The information at issue here concerns a teacher's actions in an educational setting; it cannot be said that the information relates to the teacher's "private" affairs. This category of privacy does not, therefore, apply to the requested information. See also Open Records Decision Nos. 350 (1982) (letters advising of disciplinary action against police officers not protected by common-law privacy); 167 (1977) (teacher evaluations not protected by common-law privacy).

A governmental body must withhold information under section 3(a)(1) on the basis of "false light" privacy only if it finds that release of the information would be highly offensive to a reasonable person, that public interest in disclosure is minimal, and that serious doubt exists about the truth of the information. Open Records Decision No. 438 (1986) (copy enclosed). You have not expressed whether the school district has "serious doubt" about the allegations made against the teacher. Based on the evidence submitted to this office, we cannot hold that the requirements for false light privacy protection have been met. Unless you submit to this office within ten days of receipt of this open records ruling additional information indicating that such doubt exists, you must release the requested information in its entirety.

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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 OR89-92.

Yours very truly,
Open Government Section
of the Opinion Committee

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of the Opinion Committee
Prepared by Susan L. Garrison
Assistant Attorney General

SLG/RWP/bc

Ref: ID# 5568