



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

April 24, 1989

Honorable Mike Driscoll
Harris County Attorney
1001 Preston, Suite 634
Houston, Texas 77002

Dear Mr. Driscoll:

On January 27, 1988, you sought an open records decision on the public availability of certain information in the personnel file of Sheriff Johnny Klevenhagen. On March 11, 1988, you supplemented your request. Your request was set up as a formal file, RQ-1447, along with a request from the Klein Independent School District.

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.

This file, RQ-1447, was placed on "hold" because the Attorney General entered into an Agreed Order in a civil lawsuit to issue no decisions on the public availability of teachers' and administrators' college transcripts. The Texas Supreme Court struck down this Agreed Order, stating that the Texas Attorney General cannot suspend the law by refusing to issue an open records decision.

In light of the recent decision of the Texas Supreme Court in Houston Chronicle Publishing Co. v. Jim Mattox, Attorney General of the State of Texas, No. C-7911 (March 22, 1989), the purpose of this letter is to provide Harris County with an explicit statement regarding the public availability of public employees' college transcripts.

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This office has issued several previous determinations on the public availability of public employees' college transcripts. See, e.g., Open Records Decision Nos. 467 (1987) (college transcripts of teachers in McAllen Independent School District are public); 284 (1981) (college transcripts and teacher certificates in Richardson Independent School District are public); Informal Open Records Decision No. OR88-080 (1988) (college transcripts of teachers and administrators in the Salado Independent School District are public). Additionally, in Klein Indep. School Dist. v. Mattox, 830 F.2d 576 (5th Cir. 1987), cert. denied, 108 S.Ct. 1473 (1988), the Fifth Circuit upheld an informal open records decision that college transcripts of teachers in the Klein Independent School District are public. Public licensees' transcripts are also public. Open Records Decision No. 157 (1977). Exhibit "C" may not be withheld.

The previous determinations cited are not affected by the Texas Supreme Court's decision in Texas State Employees Union v. Texas Dep't of Mental Health and Mental Retardation, 746 S.W.2d 203 (Tex. 1987). The decision in Texas State Employees Union is not applicable to the disclosure of professional public school employees' qualifications to teach, i.e., courses taken, grades received, and general academic performance. Disclosing the job qualifications that a public employee has submitted to a public employer is not the equivalent of asking public employees the intrusive type of questions at issue in the Texas State Employees Union case, i.e., whether their parents use drugs or whether they beat their children.

With regard to the other exhibits you present, the information that may be withheld is marked in brackets on Exhibit "A." Exhibits "B," "D," and "E" may not be withheld under sections 3(a)(1) or 3(a)(2).

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 OR89-131.

Yours very truly,

Open Government Section
of the Opinion Committee 

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of the Opinion Committee
Prepared by Jennifer S. Riggs
Chief, Open Government Section

JSR/bc

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