



**THE ATTORNEY GENERAL  
OF TEXAS**

**JIM MATTOX  
ATTORNEY GENERAL**

August 3, 1989

Mr. William Bednar, Jr.  
Eskew, Muir and Bednar  
Two Wahrenberger House  
208 West Fourteenth St.  
Austin, Texas 78701

Dear Mr. Bednar:

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# 6507; this decision is OR89-234.

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 Del Valle Independent School District has received an Open Records Act request for a copy of a letter from an administrator of the school district to the parents of a student concerning an investigation the school administration conducted into an incident that had occurred between that student and another student. The requestor also seeks copies of documentary material related to the incident consisting of disciplinary referral slips to the student and the handwritten notes made by the student. The school district asserts that the information requested is excepted from disclosure under sections 3(a)(1) and 3(a)(14) of the Act.

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Under section 3(a)(14), all information in a student's educational records that personally identifies a student is excepted from public disclosure. Open Records Decision Nos. 294 (1981); 205 (1978); 165 (1977). Notes of a public school employee regarding a student are excepted if they might identify a student. Open Records Decision No. 327 (1982). The investigative report sought here contains information that identifies a particular student and so may be withheld. Although section 3(a)(14) may not be used to withhold whole documents if information contained in the information may reasonably be deleted to avoid identifying a student, see Open Records Decision Nos. 332 (1982), 206 (1978), disclosure of the information requested here could not be made, even with deletions, without identifying the identity of the students involved. Even if information does not identify individual students but there is a relatively small number of students to which it could be applicable, it may be withheld. Open Records Decision No. 294 (1981). Because the investigative report, letters, and disciplinary referrals could not be disclosed without revealing the identity of the student, or making the identity of the student easily traceable, they may be withheld.

The scope of the privacy protections of section 3(a)(14) and of the Family Educational Rights and Privacy Act of 1974 as incorporated by section 14(e) are also broad enough to include the handwritten notes of the student. These became part of her educational records when they were apparently confiscated from her and included in the material associated with disciplinary or other administrative action taken toward her. In previous decisions we have held that papers and other documents or work produced by a student are included within section 3(a)(14). See Attorney General Opinion H-447 (1974); Open Records Decisions No. 214 (1978); 120 (1976). Note that the information protected from public disclosure under section 3(a)(14) is available on request to the student involved, the student's parent, legal guardian or spouse, or a person conducting a child abuse investigation required by section 4.05 of the Family Code. See art. 6252-17a, § 3(a)(14).

Because this decision resolves your request on the basis of sections 3(a)(14) and 14(e), it is unnecessary to address your arguments regarding section 3(a)(1). 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

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records decision. If you have questions about this ruling,  
please refer to OR89-234.

Yours very truly,

*Open Government Section  
of the Opinion Committee* *DN*

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Prepared by David A. Newton  
Assistant Attorney General

DAN/bc

Ref.: ID# 6507