



**THE ATTORNEY GENERAL  
OF TEXAS**

August 28, 1989

**JIM MATTOX  
ATTORNEY GENERAL**

Mr. T. L. Rees  
Thompson & Rees  
Attorneys at Law  
P. O. Box 1007  
Colorado City, Texas 79512

Dear Mr. Rees:

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# 7228; this decision is OR89-283.

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 Westbrook Independent School District (WISD) received an open records request for certain records relating to the recent employment of a particular teacher. Among the records being sought are the teacher's application and contract with WISD, the teacher's service record, and copies of all certificates issued to the teacher by the Texas Education Agency. You contend that all of the requested records may be withheld from required public disclosure under sections 3(a)(2), 3(a)(3), and 3(a)(17) of the Open Records Act.

Section 3(a)(17), in conjunction with section 3A of the act, protects from required public disclosure the home address and telephone number of public employees, but only if the employee elects no later than fourteen days after the beginning date of employment to protect this information. You have not indicated that the teacher in question has made such an election. Unless you submit additional information to this office within five days of receipt of this letter

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demonstrating that the teacher has requested pursuant to either subsection (a) or (b) of section 3A of the act that this information not be disclosed, this information must be released.

Section 3(a)(2) protects information in personnel files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. To withhold information pursuant section 3(a)(2), 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. Hubert v. Harte-Hanks Texas Newspapers, Inc., 652 S.W.2d 546 (Tex. App. - Austin 1983, writ ref'd n.r.e.). None of the records at issue meet this test. See Open Records Decision Nos. 336 (names of employees taking sick leave and dates thereof are not excepted by section 3(a)(2)); 329 (1982) (employee's previous experience and background is public information).

Section 3(a)(3) of the Open Records Act excepts from required public disclosure information relating to litigation, but only if disclosure of the materials would adversely affect the governmental body's litigation interests. Open Records Decision No. 493 (1988). You have not shown that the requested material meets these tests; consequently you may not withhold this information pursuant to section 3(a)(3). The requested information is not protected from public disclosure by any sections of the act that you have cited and must, therefore, be released.

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 OR89-283.

Yours very truly,

*Open Government Section  
of the Opinion Committee*

Open Government Section  
of the Opinion Committee  
Approved by David A. Newton  
Assistant Attorney General

DAN/RWP/bc

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Ref.: ID# 7228