



THE ATTORNEY GENERAL
OF TEXAS

JIM MATTON
ATTORNEY GENERAL

January 16, 1990

Ms. Merri Schneider-Vogel
Bracewell & Patterson
Attorneys for Huffman
Independent School District
2900 South Tower
Houston, Texas 77002-2781

Dear Ms. Schneider-Vogel:

Please disregard the Opinion Ruling you recently received designated OR90-001, dated January 15, 1990. The ruling number was incorrect, and a replacement ruling, designated OR90-024, is attached.

We hope that this has not caused any inconvenience to you. If you have any questions, please feel free to contact our office.

Yours very truly,

Open Government Section *JK*
of the Opinion Committee

Open Government Section
of the Opinion Committee

/le

Enclosure: OR90-024

cc: Ms. Nell Leger
Acting Superintendent
Huffman Independent School District
24403 E. Lake Houston Parkway
Huffman, Texas 77336



THE ATTORNEY GENERAL
OF TEXAS

JIM STANTON
ATTORNEY GENERAL

January 15, 1990

Ms. Merri Schneider-Vogel
Bracewell & Patterson
Attorneys for Huffman
Independent School District
2900 South Tower
Pennzoil Place
Houston, Texas 77002-2781

Dear Ms. Schneider-Vogel:

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# 7569; this decision is OR90-024.

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. Attorney General Opinion H-436 (1974). The act does not require this office to raise and consider exceptions that you have not raised.

The Huffman Independent School District (HISD) received an open records request for an HISD teacher's personnel file. You contend that section 3(a)(1) and 3(a)(2) of the Open Records Act protect the teacher's birth certificate from required public disclosure and that section 3(a)(11) protects all of the teacher's performance evaluations.

Your request regarding the teacher's performance evaluations is governed by Open Records Decision No. 284 (1981) (enclosed). This type of information is protected by section 3(a)(11).

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

Ms. Merri Schneider-Vogel
January 15, 1990
Page 2

section 3(a)(2) protection is the same as that for information protected by common-law privacy under section 3(a)(1): to be protected from required disclosure 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.).

Absent specific circumstances, information contained in birth certificates does not come within the realm of common-law privacy rights. See Open Records Decision No. 486 (1987). You have not demonstrated, and it is not readily apparent to this office, that the teacher's birth certificate contains any "highly intimate or embarrassing" information. Because you have raised none of the act's other exceptions to required public disclosure with regard to this document, it must 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 OR90-024.

Yours very truly,

*Open Government Section
of the Opinion Committee*

Open Government Section
of the Opinion Committee *S.G.*
Approved by Susan Garrison
Assistant Attorney General

SG/RWP/le

Ref.: ID# 7569, 7629

Enclosure: ORD-284

cc: Ms. Nell Leger
Acting Superintendent
Huffman Independent School District
24403 E. Lake Houston Parkway
Huffman, Texas 77336