



THE ATTORNEY GENERAL  
OF TEXAS

JIM MATTOX  
ATTORNEY GENERAL

March 22, 1990

Mr. John S. Aldridge  
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Attorneys for Center Point  
Independent School District  
P.O. Box 2156  
Austin, Texas 78768

OR90-111

Dear Mr. Aldridge:

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# 8542.

The Center Point Independent School District received an open records request for a letter written by the school district's attorney to the Texas Education Agency regarding allegations against the district's former superintendent. You contend that this letter should be withheld in its entirety pursuant to section 3(a)(3) of the Open Records Act because details of the investigation have been turned over to the Kerr County District Attorney's Office for possible criminal prosecution. This office has confirmed with Mr. Ron Sutton, the Kerr County District Attorney, that no criminal prosecution regarding this matter is anticipated. Consequently, section 3(a)(3) is inapplicable in this instance.

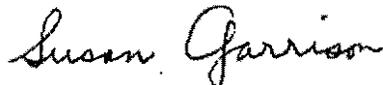
You also contend that portions of the letter come under the protection of section 3(a)(2) and 3(a)(11). The test for section 3(a)(2) protection is the same as that for information protected by common-law privacy under section 3(a)(1): to be protected from required disclosure the information must contain 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.). It cannot be said that the information you have marked on page 2 of the letter meets both of these tests, especially if the allegations are founded in fact. There exists legitimate public

interest in both the actions of the district's employees during working hours and the manner in which the school administration addresses allegations made against its employees. Consequently, you may not withhold this information.

With regard to section 3(a)(11), this office agrees that most of the information you have marked may be withheld. We note, however, that section 3(a)(11) does not protect facts and written observation of facts and events that are severable from advice, opinions, and recommendation. Open Records Decision No. 450 (1986). Consequently, the information on page 3 under the heading "Tuesday, October 17" must be released. We additionally note that although certified agendas and tape recordings of executive sessions of school board meetings are made confidential by the Texas Open Meetings Act, see V.T.C.S. art. 6252-17, § 2A(c), information contained in other records that reveal the substance of executive session discussions are not so protected. Cf. Attorney General Opinion JM-1071 (1989) (Open Meetings Act does not prohibit members of a governmental body in attendance at an executive session from making public statements about the subject matter of that session) (copy enclosed).

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. Please insure that Mr. Phillip Furman receives a copy of this ruling. If you have questions about this ruling, please refer to OR90-111.

Yours very truly,



Susan Garrison  
Assistant Attorney General  
Opinion Committee

SG/RWP/le

Ref.: ID# 8542

Enclosure: Attorney General Opinion JM-1071