THE ATTORNEY GENERAL
OF TEXAS

JIM MATTOX
ATTORNEY GENERAL

March 26, 1990

Ms. Laura S. Groce
Attorney for Judson I.S.D.
3432 Greystone Drive, Suite 200
Austin, Texas 78731

OR90-118

Dear Ms. Groce:

As attorney for the Judson Independent School District 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# 8738.

The Judson Independent School District has received an Open Records request from the attorney for the New Braunfels Independent School District for the application file of Karen Armer. You suggest that section 3(a)(3) of the Open Records Act, the litigation exception, applies to this information. Ms. Armer is engaged in litigation with the New Braunfels Independent School District, styled Kathy Armer v. New Braunfels I.S.D., Cause No. 89-596A (Comal County District Court). You state that the information is related to litigation to which the Judson Independent School District may become a party.

Section 3(a)(3) of the Open Records Act applies to "information relating to litigation of a criminal or civil nature and settlement negotiations, to which the state or political subdivision is, or may be, a party . . . ." (Emphasis added). The Judson Independent School District is not a party to any litigation to which the application file relates. This exception applies where litigation is reasonably anticipated in regard to a specific matter as opposed to a remote possibility. Open Records Decision No. 288 (1981); see also Open Records Decision No. 331 (1982). You have not explained how the fact that Ms. Armer is suing the New Braunfels Independent School District causes you to reasonably anticipate litigation against the Judson district. Nor is a connection between the New Braunfels suit and a potential suit against the Judson district apparent from the face of the records you have submitted. Accordingly, the application material is not excepted by

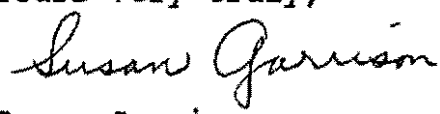
section 3(a)(3) of the Open Records Act. See Open Records Decision Nos. 331 (1982); 183 (1978).

You also suggest that "the information could be construed as governed by section 3(a)(2) as information in a personnel file, disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Section 3(a)(2) now excepts "transcripts from institutions of higher education maintained in the personnel files of professional public school employees . . . ." See generally Open Records Decision No. 526 (1989). However, Ms. Armer applied for employment as a teacher, but did not become an employee of the school district. Accordingly, her transcripts are not subject to the amended language of section 3(a)(2). Cf. Open Records Decision No. 110 (1975) (unsuccessful applicant is not an employee within section 3(a)(2) of Open Records Act).

Previous determinations of this office, Open Records Decisions Nos. 345 (1982) and 264 (1981), copies of which are enclosed, resolve your claim as to a privacy right under section 3(a)(2). This provision does not authorize you to withhold the requested information.

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 OR90-118.

Yours very truly,



Susan Garrison
Assistant Attorney General
Opinion Committee

SG/le

Ref.: ID# 8738, 8649

Enclosure: Open Records Decisions Nos. 265, 288, 331, 345

cc: Mr. Cobby A. Caputo
HAIRSTON, WALSH, ANDERSON,
UNDERWOOD & SCHULZE, P.C.

Mr. Charles Bradberry
Superintendent of Schools
New Braunfels I.S.D.