



THE ATTORNEY GENERAL
OF TEXAS

JIM MATTOX
ATTORNEY GENERAL

May 16, 1990

Ms. Merri Schneider-Vogel
Bracewell & Patterson
Attorney for Katy I.S.D.
2900 South Tower Pennzoil Place
Houston, Texas 77002-2781

OR90-191

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# 8907.

The Katy Independent School District [KISD] has received a request for a list of the names and addresses of people currently receiving disability retirement and a list of people who purchased a disability policy from a certain insurance company. You state that the KISD does not have in its records a list of people presently on disability retirement. Your claim exceptions 3(a)(1) and 3(a)(2) of the Open Records Act to required public disclosure of the list of individuals who have purchased disability insurance from a particular insurance company. The 3(a)(1) claim is based on common-law privacy rights as well as privacy rights based on the Texas Constitution.

The Open Records Act does not require governmental bodies to create new documents in response to a request. Open Records Decision No. 342 (1982). Only that information in existence is subject to disclosure. You have not indicated that this information could be "called up" under an existing computer program, in which case the information should be disclosed. See Attorney General Opinion JM-672 (1987). Id. Thus, you need not respond to the request for a list of the names and addresses of people currently receiving disability retirement.

Section 3(a)(1) exempts from public disclosure "information deemed confidential by law" which includes information deemed confidential by common-law privacy. Section 3(a)(2) exempts from public disclosure "information in personnel files, the disclosure of which would constitute

a clearly unwarranted invasion of personal privacy. . ." The test for common-law privacy in Industrial Found. of the South v. Texas Indus. Accident Bd., 540 S.W.2d 668 (Tex. 1976), cert. denied, 430 U.S. 930 (1977) is used to determine whether information is exempt under either section 3(a)(1) or 3(a)(2). Hubert v. Harte-Hanks Newspapers Inc., 652 S.W.2d 546 (Tex. App.- Austin 1983, writ ref'd n.r.e.). Information is protected under common law privacy if 1.) it contains highly intimate or embarrassing facts about a person's private affairs by which the publication of such would be highly objectionable to a reasonable person, and 2.) the information is of no legitimate concern to the public. Industrial Found., supra at 685.

All financial information including sources of income, salary, mortgage payments, assets, medical and utility bills, social security and veteran benefits, retirement and state assistance benefits and credit history are considered to be highly intimate or embarrassing facts, the disclosure of which would be highly objectionable to a reasonable person. Open Records Decision No. 373 (1983). Personal investment decisions such as whether or not to participate in a deferred compensation plan also satisfies the first prong of the Industrial Found. test. See Open Records Decision No. 545 (1990). The purchase of a disability insurance policy is the kind of financial information that a person of ordinary sensibilities would object to being disclosed.

In regard to the second prong of the Industrial Found. test. Generally, financial information is of legitimate concern to the public when it concerns the receipt of governmental funds or debts owed to governmental entities. See Open Records Decision No. 523 (1989). On the other hand, background information furnished to a public body is not of legitimate concern to the public. Id. The purchase of a disability insurance policy does not involve the expenditure of public funds or a financial transaction between an individual and a public body; therefore, it is of no legitimate concern to the public and is exempt from disclosure pursuant to section 3(a)(1) and 3(a)(2) of the Open Records Act. See Open Records Decision No. 545 (1990). Because the requested information is protected from disclosure by common-law privacy rights, we need not address the applicability of the privacy rights found in the Texas Constitution.

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 OR90-191.

Yours very truly,

A handwritten signature in cursive script, appearing to read "Kay H. Guajardo".

Kay H. Guajardo
Assistant Attorney General
Opinion Committee

KHG/le

Ref.: ID# 8907

Enclosure: Open Records Decision No. 545