



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

June 29, 1992

Honorable Jack Skeen, Jr.  
Criminal District Attorney  
Smith County Courthouse  
Tyler, Texas 75702

Open Records Decision No. 605

Re: Whether section 2(g) of the Open Meetings Act excepts from required disclosure under the Open Records Act the names of applicants for public employment discussed by the governmental body in an executive session (RQ-366)

Dear Mr. Skeen:

You ask three questions about the Open Meetings Act provision that allows a governmental body to deliberate in executive session in cases involving the employment of a public employee. V.T.C.S. art. 6252-17, § 2(g). This provision states in part:

Nothing in this Act shall be construed to require governmental bodies to hold meetings open to the public in cases involving the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee . . . .

*Id.*

You first ask whether the commissioners court, pursuant to V.T.C.S. article 6252-17, section 2(g), may meet in closed session to discuss the employment of a county employee such as the county road engineer.

It is well established that a governmental body subject to the Open Meetings Act may meet in closed or executive session to deliberate about the hiring of a public employee. See Attorney General Opinions H-1045 (1977); H-246 (1974). Although deliberation may take place in an executive session, the board may take action to hire an employee only in an open session properly noticed in accordance

with section 3A of the Open Meetings Act. Attorney General Opinions H-1047, H-1045 (1977).

You next ask whether the commissioners court, pursuant to section 2(g) of article 6252-17, V.T.C.S., may withhold the names of the applicants under consideration for the position of county road engineer from the media if the applicants specifically request that their identities remain confidential until a decision to hire is made. You finally ask whether the names of the applicants may be withheld from the media if the applicants do not request that their identities remain confidential.

The Texas Open Records Act makes the records of a governmental body available to members of the public for inspection and copying, subject to exceptions. V.T.C.S. art. 6252-17a. Information such as the names of applicants for public employment must exist in written or other documentary form before the information can be subject to a request for disclosure under the Open Records Act. See Attorney General Opinion MW-563 (1982) (Open Records Act applies to information in the possession of a governmental body and has no bearing on what members of a governmental body might say in public). The act does not require a governmental body to prepare new information in response to a request. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.--San Antonio 1978, writ dismissed w.o.j.); Attorney General Opinion H-90 (1973). Section 2A of the Open Meetings Act requires governmental bodies to keep a certified agenda of an executive session, or make a tape recording, but these records are not subject to disclosure under the Open Records Act. V.T.C.S. art. 6252-17, § 2A(c); Attorney General Opinion JM-995 (1988). We assume, for purposes of answering your question, that the commissioners court has records other than the certified agenda or tape recording of the closed session that include the names of the applicants for the position of county road engineer.

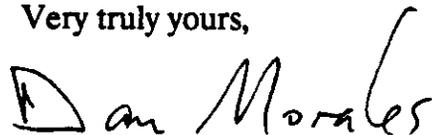
The names of applicants for public positions are available under the Open Records Act, except for the names of applicants for positions as chief executive officers of institutions of higher education that are excepted by section 3(a)(23) of the Open Records Act. *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ refused n.r.e.); Open Records Decision Nos. 585 (1991); 439 (1986); 264 (1981). If information in the possession of a governmental body is available to the public under the Open Records Act, the governmental body may not make an enforceable promise to keep it confidential. Attorney General Opinions JM-37 (1983); H-258 (1974); Open Records Decision No. 585. The mere

fact that information was discussed in an executive session does not make it confidential under the Open Records Act. Open Records Decision No. 485 (1987). Accordingly, if the commissioners court receives a request under the Open Records Act for a record containing the names of applicants for the position of county road engineer, other than the confidential record of the executive session in which the applicants were discussed, the Open Meetings Act does not authorize the commissioners court to withhold that information.

**S U M M A R Y**

Section 2(g) of the Open Meetings Act is not an exception to the Open Records Act, and it does not authorize a governmental body to withhold its records of the names of applicants for public employment who were discussed in an executive session.

Very truly yours,

A handwritten signature in black ink that reads "Dan Morales". The signature is written in a cursive style with a large initial "D".

**DAN MORALES**  
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