



DAN MORALES
ATTORNEY GENERAL

Office of the Attorney General
Jo Ann S. Wright - Page 1 (OR-91-068)
State of Texas

February 1, 1991

Ms. Jo Ann S. Wright
Attorney
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1800 City Center Tower II
301 Commerce Street
Fort Worth, Texas 76102-4118

OR91-068

Dear Ms. Wright:

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# 11340.

The Fort Worth Independent School District (the district) received an open records request for all records pertaining to the district's Human Relations Committee. You contend that an employee's letter of complaint addressed to the Human Relations Committee comes under the protection of sections 3(a)(1), 3(a)(3), and 3(a)(11) of the Open Records Act.

You first contend that the letter of complaint is excepted from public disclosure by common-law privacy as incorporated into the Open Records Act by section 3(a)(1). Specifically, you assert that the release of the information will invade the privacy of 1) several district officers and employees by placing them in a false light and 2) the complainant by revealing "sensitive" information about her employment history.

False-light invasion of privacy was discussed at length in Open Records Decision No. 579 (1990) (copy enclosed). As noted in that open records decision, the gravamen of a false light privacy complaint is not that the information revealed is confidential, but that it is false. Therefore, an exception to the Open Records Act focused on the confidentiality of information does not embrace this particular tort doctrine. Consequently, false-light privacy does not protect any of the letter from public disclosure. If, however, portions of the letter are in fact inaccurate or

untrue, there is no reason that the district may not also release, along with the complaint letter, other supplemental information that explains why and to what extent the information is inaccurate or that otherwise clarifies the information contained in the records at issue.

Disclosural privacy protects information if it consists of 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.); Industrial Foundation of the South v. Texas Industrial Accident Board, 540 S.W.2d 668, 683-85 (Tex. 1976), cert. denied, 430 U.S. 931 (1977). The information at issue pertains solely to the complainant as a public servant, and as such it cannot be deemed to be outside the realm of public interest. Common-law privacy does not protect this information.

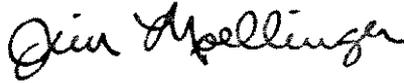
You also contend that the complaint letter comes under the protection of section 3(a)(3), the litigation exception, because "[t]he complainant states that she has been in contact with the EEOC." The mere chance of litigation will not trigger the 3(a)(3) exception. Open Records Decision No. 328 (1982). Unless the complainant has filed a formal complaint with the EEOC, her mere "contact" with that agency is not sufficient to withhold the letter pursuant to section 3(a)(3). Based on the information provided to this office, section 3(a)(3) is inapplicable in this instance.

Section 3(a)(11) of the act excepts interagency and intra-agency memoranda and letters, but only to the extent that they contain advice, opinion, or recommendation intended for use in the deliberative process. Open Records Decision No. 538 (1990). In Open Records Decision No. 429 (1985), this office indicated that information protected by section 3(a)(11) must be prepared by a person or entity with an official reason or duty to provide the information in question. See also Open Records Decision Nos. 283, 273 (1981). This helps assure that the information plays a role in the deliberative process; if it does not, it is not entitled to protection under section 3(a)(11). Open Records Decision No. 464. See Wu v. National Endowment of the Humanities, 460 F.2d 1030 (5th Cir.), cert. denied, 410 U.S. 926 (1972). You may withhold only those portions of the complaint letter that we have marked as coming under the protection of section 3(a)(11).

You also seek to withhold a particular memorandum from the district to the board of education pursuant to section 3(a)(11). After reviewing the memorandum, this office has concluded that it may be withheld in its entirety pursuant to section 3(a)(11).

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 OR91-068.

Yours very truly,



Jim Moellinger
Assistant Attorney General
Opinion Committee

JM/RWP/le

Ref.: ID# 11340

Enclosures: Open Records Decision No. 579
Marked documents

cc: Kara L. Rogge
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