



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 9, 1991

Mr. C. Ed Davis
Special Counsel
Texas Employment Commission
101 E. 15th Street
Austin, Texas 78701

OR91-169

Dear Mr. Davis:

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# 11937.

An employee of the agency has requested a copy of the final report of an investigation conducted by the Texas Employment Commission concerning the employee's allegations of harassment. You have submitted a marked copy of the report for our review. You assert that sections 3(a)(1) and 3(a)(11) of the Open Records Act except the marked portions from disclosure.

Section 3(a)(1) excepts from required disclosure information deemed confidential by constitutional or statutory law or by judicial decision. You do not refer us to, and we are unaware of, any applicable constitutional or statutory provision that makes the marked portions confidential as a matter of law. Nor do you refer us to any judicial opinion holding similar information confidential.

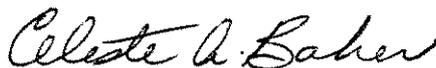
Texas courts, however, have recognized certain privacy principles which, in conjunction with section 3(a)(1), require the withholding of information under the Open Records Act. See Industrial Found. of the South v. Texas Indus. Accident Bd., 540 S.W.2d 668 (Tex. 1976), cert. denied, 430 U.S. 931 (1977); Hubert v. Harte-Hanks Texas Newspapers, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.). Under Industrial Foundation, supra, information is confidential to the extent that it: (1) contains highly intimate or embarrassing facts about a person's private affairs, such that its publication would be highly objectionable to a person of ordinary sensibilities; and (2) is of no legitimate interest to the public. See also Open Records Decision 579 (1990) (public has legitimate interest in on-the-job conduct of public employees).

We conclude from our review of the marked portions that none of the information contained therein may be withheld on the basis that its disclosure would violate the privacy interests of third parties other than the employee requesting a copy of the investigative report. With regard to the privacy interests of the employee requesting the report, even assuming that the information is protected from public disclosure because of that employee's privacy interests, section 3B provides the employee a special right of access to the information. Thus, none of the marked portions may be withheld pursuant to section 3(a)(1) of the act.

Section 3(a)(11) excepts from disclosure interagency or intra-agency advice, opinion, and recommendation. Factual information and written observations about facts and events that are severable from the advice, opinions, or recommendations must be disclosed. See Open Records Decision Nos. 559, 538 (1990); 213 (1978). We have reviewed the portions that you have marked as excepted from disclosure on the basis of section 3(a)(11). We conclude that you may withhold all portions marked except for the sentence you have marked that begins on the bottom of page 13 and continues through the middle of the second sentence on page 14.

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 OR91-169.

Yours very truly,



Celeste A. Baker
Assistant Attorney General
Opinion Committee

CAB/lcd

Ref.: ID# 11937

Enclosure: Open Records Decision Nos. 579, 559, 538 (1990); 213 (1978); marked documents

cc: Anjali S. Pai Panadiker
Administrative Technician II
Field & Technical Services Section
Tax Department
Texas Employment Commission
101 E. 15th Street
Austin, Texas 78701