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ATTORNEY GENERAL

Office of the Attorney General
State of Texas

July 9, 1991

Mr. John T. Fleming
Attorney for Seminole ISD
Henslee, Ryan & Groce
3432 Greystone Drive
Austin, Texas 78731

OR91-321

Dear Mr. Fleming:

You ask whether an application for employment as superintendent of schools is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 12261.

We have considered the exceptions you claimed, specifically sections 3(a)(1), (2), and (4), and have reviewed the documents at issue.

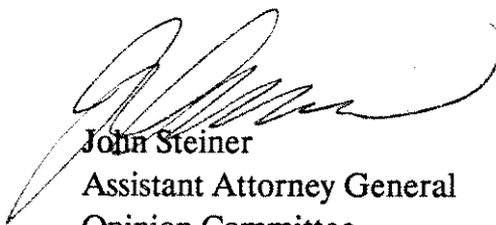
Section 3(a)(1) excepts from public disclosure "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." In *Hubert v. Harte-Hanks Texas Newspapers* 652 S.W.2d 546 (Tex. App. -- Austin 1983, writ ref'd n.r.e.) the court found that personnel file information is confidential under section 3(a)(2) only if the information meets the test articulated in *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977), for common-law privacy protection under section 3(a)(1). Accordingly, sections 3(a)(1) and 3(a)(2) may be considered together. In *Industrial Foundation, supra*, the court found that information is excepted from public disclosure if (1) it contains highly intimate or embarrassing information about a person's private affairs, the release of which would be highly objectionable to a person of ordinary sensibilities, *and* (2) it is of no legitimate concern to the public. *Id.* at 683-685. Moreover, the decision in *Hubert, supra*, is dispositive of your claims under sections 3(a)(1) and (2) with respect to common-law privacy. Nor does any privacy interest in the requested information rise to a constitutional level. *See, Klein Indep. School Dist. v. Mattox*, 830 F.2d 576 (5th Cir. 1987), *cert denied*, 485 U.S. 1008 (1988). Accordingly, the requested information is not excepted from required public disclosure under sections 3(a)(1) or 3(a)(2).

The Open Records Act places the burden of establishing the applicability of an exception on the governmental body. Attorney General Opinion H-436 (1974). With respect to your claim under section 3(a)(4), it is not apparent, nor have you explained, how the release of the requested information will place the school district's interests at a disadvantage *vis a vis* competing school districts. Consequently, we have no basis upon which to consider your claim under section 3(a)(4) and must consider you to have failed to establish the applicability of the asserted exception. Accordingly, the requested information must be released.

I note that you did not include a copy of the request for the information at issue with your request for an open records decision. Nor did you respond to our request for the same in our letter to you of April 25, 1991. In the future please include a copy of the request with all submissions to this office under section 7 of the Open Records Act. As we do not have a name and address for the requestor of this information, we are unable to send a copy of this response to the requestor. We will therefore rely on you to do so.

Because case law and prior published 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 OR91-316.

Yours very truly,



John Steiner
Assistant Attorney General
Opinion Committee

JS/lb

Ref.: ID# 12261

bcc: Robert Nebb
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Lubbock, TX 79401