



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 5, 1991

Ms. Chris G. Elizalde
Walsh, Judge, Anderson, Underwood
& Schulze, P.C.
P.O. Box 2156
Austin, Texas 78768

OR91-545

Dear Ms. Elizalde:

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# 13991.

The Lake Travis Independent School District (the district), which you represent, has received a request for information relating to a former employee. Specifically, the requestor seeks nine categories of information. You address only the seventh of those categories, which relates to the amount of money paid to the former employee to secure her resignation. You claim that such information is protected from required public disclosure by sections 3(a)(2) and 3(a)(3) of the Open Records Act. You do not address the applicability of the Open Records Act to the other eight categories of information. Accordingly, we presume this information to be public. See Open Records Decision No. 565 (1990) at 10.

As for the information for which you claim exception, previous open records decisions issued by this office resolve your request. Open Records Decision No. 400 (1983) at 5, held that the test for section 3(a)(1) privacy elaborated 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), is applicable to section 3(a)(2). In *Industrial Foundation* the Texas Supreme Court ruled that common law privacy excepts only

"information contain[ing] highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person," provided "the information is not of legitimate concern to the public." 540 S.W.2d at 685. Section 3B(a) of the Open Records Act states in part that "a person or the authorized representative of a person has, beyond the right of the general public, a special right of access to and to copies of any records held by a governmental body that contain information relating to the person that is protected from public disclosure by laws intended to protect that person's privacy interests." Section 3B deals with the special right of access a person has to information about himself, which information is protected from public disclosure by privacy interests. Open Records Decision No. 542 (1990) at 5.

An authorized representative of the employee at issue here seeks information which relates to that person. Accordingly, you may not withhold the information on the basis of protecting the employee's privacy interests.

You also claim the requested information is excepted from required public disclosure by section 3(a)(3). Open Records Decision No. 555 (1990) held that the section 3(a)(3) exception is applicable when litigation is pending or may be reasonably anticipated and the requested information relates to that litigation. Section 3(a)(3) forces parties to a lawsuit to obtain relevant information through the normal process of discovery. Open Records Decision No. 551 (1990) at 4. However, once a governmental body has selectively disclosed information relating to litigation, it is ordinarily precluded from invoking section 3(a)(3). Open Records Decision No. 454 (1986).

From an examination of the records submitted to us for review, it is clear that the requested information has previously been disclosed to the requestor. We conclude, then, that the requested information may not be excepted from required public disclosure by section 3(a)(3) and must be released.

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 OR91-545.

Yours very truly,

A handwritten signature in cursive script that reads "Susan Garrison".

Susan Garrison
Assistant Attorney General
Opinion Committee

SG/GK/lcd

Ref.: ID# 13991

cc: Mr. Stephen W. LeBreton
15105 Flamingo Dr. So.
Austin, Texas 78734