



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

November 21, 1991

Mr. Michael H. Beeman  
Records Management Officer  
Ysleta Independent School District  
9600 Sims Drive  
El Paso, Texas 79925-7225

OR91-587

Dear Mr. Beeman:

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# 13980.

The Ysleta Independent School District (the district) received an open records request from a district teacher for access to the "correspondence file as well as all other files" pertaining to the teacher/requestor. Although the requestor was granted access to all of the information contained in his district personnel file, you informed the requestor that you were withholding from him two documents maintained in a separate file<sup>1</sup> by the principal of the requestor's school. You have now forwarded to this office for review five signed statements created by district employees that you seek to withhold in order to protect the authors' "personal privacy." You state that these documents were "offered under the assumption that the individuals would have their personal privacy protected" and that "[n]one of the people submitting these signed statements have given their permission to release their statements to [the requestor]."

We note at the outset that information is not made confidential under the Open Records Act simply because the party submitting the information anticipates or requests that it be kept confidential. *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 687 (Tex. 1976), *cert. denied* 430 U.S. 931 (1977). In

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<sup>1</sup>For purposes of the Open Records Act, such records would be deemed to be a part of the teacher's personnel file. See Open Records Decision No. 332 (1982) (copy enclosed).

other words, a governmental body cannot, through a contract or agreement, overrule or repeal provisions of the Open Records Act. Attorney General Opinion JM-672 (1987). Consequently, unless the requested information falls within one of the act's exceptions to disclosure, it must be released.

It has been brought to our attention that the district received the request for information on or about November 12, 1990. You requested an open records decision from this office on August 22, 1991. Consequently, you failed to request a decision within 10 days as required by section 7(a) of the act. Section 7(a) of the act requires a governmental body to release requested information or to request a decision from the attorney general within 10 days of receiving a request for information that the governmental body wishes to withhold. When a governmental body fails to request a decision within 10 days of receiving a request for information, there is a legal presumption that the information is public. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ). The governmental body must show a compelling interest to withhold the information to overcome this presumption. *See id.*

Although you have not explicitly raised any of the Open Records Act exceptions to public disclosure, you contend that the release of the documents in question would violate the authors' right to privacy. Section 3(a)(2) of the act protects "information in personnel files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy . . . ." Because information protected by section 3(a)(2) is deemed confidential by law, *see Hubert v. Harte-Hanks Texas Newspapers, Inc.*, 652 S.W.2d 546 (Tex. App.--Austin, 1983, writ ref'd n.r.e.), the presumption of openness does not reach this type of information. *Cf.* Open Records Decision Nos. 591, 587 (1991) (information made confidential by statute not presumed public because of non-compliance with "ten day rule"). Because you have raised none of the act's other exceptions to required public disclosure, the information at issue may be withheld only if it is protected by common-law privacy.

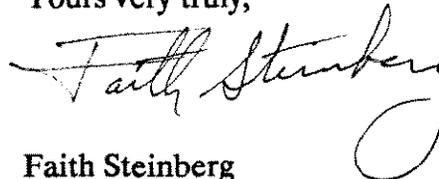
A prior determination of this office, Open Records Decision No. 315 (1982) (copy enclosed), resolves your request. Although section 3(a)(2) is designed to protect public employees' personal privacy, the scope of section 3(a)(2) protection is very narrow. *See* Open Records Decision No. 336 (1982). The test for section 3(a)(2) protection is the same as that for information protected by common-law privacy under section 3(a)(1): to be protected from required disclosure the information must contain 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. *See Hubert, supra*, at 550.

The information at issue meets neither of these tests. The signed statements pertain solely to the requestor's and fellow employees' actions as public servants. They do not contain "highly intimate or embarrassing information" of a personal nature, nor can they be deemed to be outside the realm of public interest. The mere fact that district employees submitted written comments about the requestor to the school principal does not implicate those individuals' privacy rights under common law. Section 3(a)(2) was not intended to protect the type of information at issue here. Consequently, the information at issue is public and must be released in its entirety.

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 OR91-587.

Yours very truly,



Faith Steinberg  
Assistant Attorney General  
Opinion Committee

FS/RWP/lcd

Ref.: ID# 13980  
ID# 12820

Enclosures: Open Records Decision Nos. 332, 315

cc: Alfred Corona  
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(w/o enclosures)