



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 22, 1991

Mr. E. W. Henderson
Attorney for Highland Park Independent
School District
Underwood, Wilson, Berry, Stein & Johnson, P.C.
P. O. Box 9158
Amarillo, Texas 79105-9158

OR91-590

Dear Mr. Henderson:

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# 13185.

The Highland Park Independent School District (the district) received open records requests for all documents and memoranda relating to the investigation of alleged misconduct by certain district employees with regard to the UIL eligibility of two district student athletes. Although the district has released to the public a report from the district "Investigative Tribunal" that investigated the allegations, you seek to withhold all supporting evidence gathered by the district pursuant to the informer's privilege aspect of section 3(a)(1) of the Open Records Act.

The "informer's privilege" aspect of section 3(a)(1) protects the identity of persons who report violations of law that carry criminal or quasi-criminal penalties; when information does not describe conduct that violates such a law, the informer's privilege does not apply. Open Records Decision Nos. 515 (1988); 191 (1978). After reviewing the information at issue, it is not clear to this office the precise law of which the "informant" is alleging a violation.

In this instance, however, we need not reach this issue. Because part of the purpose of the privilege is to prevent retaliation against informants, the privilege does not apply when the informant's identity is known to the party who would have

cause to resent the communication. *See* Open Records Decision No. 208 (1978). It is clear from a review of the documents at issue that not only are the accused well aware of the identity of their accuser, but they are also aware of the content of the accusations. Accordingly, none of the information at issue comes under the protection of the informer's privilege.

We note, however, that section 3(a)(1) of the act requires the district to withhold information protected by common-law privacy. *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* it is of no legitimate concern to the public. *Id.* at 683-85. We have marked the information that the district must withhold pursuant to this aspect of section 3(a)(1).

This does not, however, end our discussion. Although the attorney general will not ordinarily raise an exception that might apply but that the governmental body has failed to claim, *see* Open Records Decision Nos. 455 (1987); 325 (1982), we will raise sections 3(a)(14) and 14(e) because the release of confidential information could impair the rights of third parties and because its improper release constitutes a misdemeanor. *See* V.T.C.S. art. 6252-17a, § 10(a).

Section 3(a)(14) requires that the district withhold "student records." Section 14(e) of the Open Records Act provides as follows:

Nothing in this Act shall be construed to require the release of information contained in *education records* of any educational agency or institution except in conformity with the provisions of the Family Educational Rights and Privacy Act of 1974, as enacted by Section 513 of Public Law 93-380, codified as Title 20 U.S.C.A. Section 1232g, as amended. (Emphasis added.)

The Family Educational Rights and Privacy Act of 1974, which is informally known as "the Buckley Amendment," provides that no federal funds will be made available under any applicable program to an educational agency or institution that releases education records (or personally identifiable information contained therein other than directory information) of students without the written consent of the parents to anyone but certain numerated federal, state, and local officials and

institutions. *See* 20 U.S.C. § 1232g subsections (a)(1)(A), (a)(2), (b)(1). "Education records" means those records that contain information directly related to a student and are maintained by an educational agency or institution or by a person acting for such agency or institution." 20 U.S.C. § 1232g(a)(4)(A). We have marked the portions of the requested documents that consist of "education records" for purposes of the Buckley Amendment; this information must be withheld unless a parent of the identified students provides written consent to the information's release as provided. *See id.* § 1232g(b)(1).

On the other hand, the requested information also includes "directory information" relating to students in the district. *See id.* § 1232g(a)(5)(A) (directory information defined). This type of information may be withheld only if a parent of a student has previously opted to withhold of this information. *See id.* § 1232g(a)(5)(b).

You have raised none of the other exceptions listed in section 3(a) of the Open Records Act with regard to the information at issue. Consequently, the district must release the remaining information.

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 OR91-590.

Yours very truly,



Rick Gilpin
Assistant Attorney General
Opinion Committee

RG/RWP/lcd

Ref.: ID# 13185

Enclosures: Open Records Decision No. 515
Marked documents