



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 31, 1991

Mr. William H. Bingham
Attorney for the Austin Independent
School District
McGinnis, Lochridge & Kilgore
1300 Capitol Center
919 Congress Avenue
Austin, Texas 78701

OR91-661

Dear Mr. Bingham:

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# 14247.

The Austin Independent School District (the "district"), which you represent, has received a request for information relating to certain student activity account records. You have submitted to us for review examples of the requested documents: memos, letters, correspondence, and documents that include disciplinary notices to any individual charged with the responsibility of maintaining the student activity accounts. You argue that such documents are excepted from required public disclosure by sections 3(a)(1), 3(a)(2), and 3(a)(11) of the Open Records Act.

Previous open records decisions issued by this office resolve your request. Open Records Decision No. 400 (1983) at 4-5, 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. Open Records Decision No. 444 (1986) at 4 held that information relating to the termination of a public employee may not be withheld from required public disclosure under section 3(a)(2).

We have examined the sample documents submitted to us for review. Those documents relate to the job performance of a public employee and to his termination and thus contain information of legitimate public concern. *See also* Open Records Decision No. 470 (1987) at 4. Accordingly, those documents may not be withheld from required public disclosure under sections 3(a)(1) and 3(a)(2) of the Open Records Act.

You also claim that some of the requested information is excepted from required public disclosure by section 3(a)(11) of the Open Records Act. Section 3(a)(11) excepts:

inter-agency or intra-agency memorandums or letters which would not be available by law to a party in litigation with the agency.

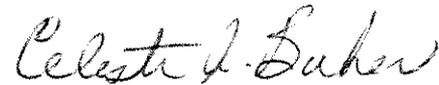
Section 3(a)(11) excepts memoranda and letters, but only to the extent that they contain advice, opinion, or recommendation intended for use in the entity's policy-making or deliberative process. Open Records Decision No. 464 (1987) at 2-3. However, facts and written observations of fact that are severable from material excepted under section 3(a)(11) must be disclosed. Open Records Decision No. 582 (1990).

While the sample documents you submitted to us contain advice, opinion, and recommendation, they primarily contain factual information not ordinarily excepted from public disclosure under section 3(a)(11). For your convenience, we have marked the information in the sample documents that may be withheld from required public disclosure under section 3(a)(11). The remaining information in these documents 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 OR91,661.

Yours very truly,



Celeste A. Baker
Assistant Attorney General
Opinion Committee

CAB/GK/lcd

Ref.: ID# 14247
ID# 14411

Enclosures: Marked Documents

cc: Ms. Karen Sonlitener
KVUE Television
P. O. Box 9927
Austin, Texas 78766