



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

January 10, 1992

Mr. Tom Carr  
Attorney for Lake Worth Independent  
School District  
550 Bailey, Suite 601  
Fort Worth, Texas 76107

OR92-12

Dear Mr. Carr:

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# 14220.

The Lake Worth Independent School District (the "district"), which you represent, has received a request for information relating to the suspension and resignation of the district superintendent. Specifically, the requestor seeks all correspondence and documents related to the suspension and resignation. You have located a letter dated October 18, 1991, containing allegations of misconduct and supporting documentation; a letter dated October 25, 1991, containing allegations of misconduct; and the settlement documents. You assert these documents are responsive to the request. Although you do not object to release of the settlement documents, you claim that the remaining information is excepted from required public disclosure by sections 3(a)(1), 3(a)(2), and 3(a)(11) of the Open Records Act.

You claim that the requested materials are made confidential by the Open Meetings Act, article 6252-17a, V.T.C.S., and are thus excepted from required public disclosure by section 3(a)(1) of the Open Records Act, which excepts "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." Section 2A of the Open Meetings Act requires governmental

bodies meeting in closed session to "keep a certified agenda of the proceedings." V.T.C.S. art. 6252-17, § 2A(a). The certified agenda

shall include an announcement made by the presiding officer at the beginning and end of the meeting indicating the date and time. The certified agenda shall state the subject matter of each deliberation and shall include a record of any further action taken. The certified agenda of closed or executive sessions shall be made available for public inspection and copying only upon court order in an action brought under this Act.

*Id.* subsec. (c). Subsection (d) of section 2A provides:

In lieu of the requirements for maintaining a certified agenda as provided in Subsections (a), (b), and (c) of this section, a governmental body may make a tape recording of the proceedings which shall include an announcement made by the presiding officer at the beginning and end of the meeting indicating the date and time.

As with the certified agenda, a tape recording of an executive session may not be made public unless so ordered by the judge of a district court. *See id.* subsec. (e), (h); *see also* Open Records Decision Nos. 563 (1990) (minutes of a properly held executive session are confidential by virtue of section 2A(c) of the Open Meetings Act); 495 (1988) (Open Meetings Act specifically makes confidential certified agendas or tapes of executive sessions).

The information submitted to us for review includes two letters with attachments. Two letters are addressed to the former superintendent; the other, to Mr. Neal Adams. The letters relate to allegations of official misconduct. You claim that the letters "originated in an executive session of the board" and are, "in essence, minutes of a privately conducted meeting and therefore excepted from disclosure." We disagree. The letters clearly do not constitute a certified agenda as defined in section 2A of the Open Meetings Act or minutes of an executive session. Information is not excepted from required disclosure simply by virtue of its having been considered in an executive session. *See* Open Records Decision No. 485 (1985) at 9-10. Accordingly, the requested information may not be withheld from required public disclosure by section 3(a)(1) of the Open Records Act.

You also assert that the requested information is excepted from required public disclosure by section 3(a)(2). Open Records Decision No. 400 (1983) at 4 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." *Id.* at 685. Open Records Decision No. 444 (1986) 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 conclude that the two letters are not of an intimate or embarrassing nature and are of legitimate concern to the public. Accordingly, they may not be withheld from required public disclosure under section 3(a)(2) of the Open Records Act.

Finally, you claim some of the requested information is excepted from required public disclosure by section 3(a)(11). 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).

We have examined the documents submitted to us for review and have marked those portions of the documents that may be withheld under section 3(a)(11). The remainder of the letters and their attachments must be released in their 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 OR92-12.

Yours very truly,



Susan Garrison  
Assistant Attorney General  
Opinion Committee

MRC/GK/lcd

Ref.: ID# 14220  
ID# 14410

cc: Mr. George D. Hollis, Jr.  
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