Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 12, 1992

Mr. Dick Stengel
Attorney at Law
P. O. Box 1504
El Paso, Texas 79948

OR92-587

Dear Mr. Stengel:

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# 17211.

The Socorro Independent School District (the "school district"), which you represent, has received a request for certain information relating to school district employees. Specifically, the requestor seeks:

> A list of all non-teaching employees, their social security numbers, drivers license numbers, addresses, birthdays, and home phone numbers . . . [and] a list of all employees who transport students to and from school or on school related activities, as well as their social security numbers, addresses, birthdays, and home phone numbers.

You claim that the requested information is excepted from required public disclosure by sections 3(a)(1), 3(a)(2), and 3(a)(17) of the Open Records Act.

Section 3(a)(1) of the Open Records Act excepts from required public disclosure "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." Section 3(a)(2) protects in pertinent part "information in personnel files, the disclosure of which would constitute a clearly unwarranted invasion of personnel privacy." The court in *Hubert v. Harte-Hanks Texas Newspapers Inc.*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.) found that section 3(a)(2) protects personnel file information only if its release would cause an invasion of privacy under the test articulated for section 3(a)(1) of the act by the Texas Supreme Court 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). Under the *Industrial Foundation* case, information may be withheld on common-law privacy grounds only if it is highly intimate or embarrassing and is of no legitimate concern to the public. A public employee's name, date of birth, and social security number are not protected by privacy interests and is open to the public. *See* Open Records Decision No. 455 (1987); *see also* V.T.C.S. art. 6252-17a, § 6(2) (names of all employees of governmental bodies specifically made public). We are unaware of any law that makes driver's license numbers confidential. Nor do we conclude that driver's license numbers meet the test for common-law privacy articulated in *Industrial Foundation*. *See* V.T.C.S. art. 6687b, § 21(e) (driver's license information available to the public); *see also* V.T.C.S. art. 6687b § 21(j)(1) (the Department of Public Safety may provide a magnetic tape containing driver's license information). Accordingly, the names, birth dates, social security numbers, and driver's license numbers may not be withheld from required public disclosure under sections 3(a)(1) and 3(a)(2) of the Open Records Act and must be released.

Section 3(a)(17)(A) excepts from required public disclosure "the home addresses or home telephone numbers of each official or employee or each former official or employee of a governmental body except as otherwise provided by Section 3A of this Act." Section 3A(a) provides that section 3(a)(17) may be applied only when an employee indicates in writing that he does not want his home address and telephone number disclosed. Accordingly, if the public employees at issue here have indicated in writing that they do not want their home addresses and telephone numbers disclosed, the home addresses and telephone numbers must be withheld from required public disclosure under section 3(a)(17) of the Open Records Act.[1]

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

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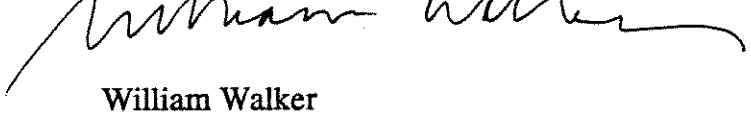
[1]A governmental body, however, may not solicit a response from its employees under section 3A in response to a pending open records request; whether requested information is public under section 3A and section 3(a)(17) is determined as of the time the request for information is made. Open Records Decision No. 530 (1989). Please note as well, however, that the Open Records Act does not require a governmental body to obtain information not in its possession, Open Records Decision No. 558 (1990).

a published open records decision. If you have questions about this ruling, please refer to OR92-587.

Yours very truly,



William Walker
Assistant Attorney General
Opinion Committee

WW/GCK/lmm

Ref.: ID# 17211

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