



Office of the Attorney General
State of Texas

June 4, 1993

DAN MORALES
ATTORNEY GENERAL

Mr. William T. Armstrong
Foster, Lewis, Langley, Gardner & Banack
112 East Pecan, Suite 1100
San Antonio, Texas 78205-1533

OR93-279

Dear Mr. Armstrong:

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# 19456.

The North East Independent School District (the "NEISD") received an open records request for

any and all documents of any nature regarding the academic records and/or grading criteria for any and all students engaged in athletic courses for the past (5) years to the present.

NEISD has agreed to release documents containing grading policies; however, you contend that the information concerning athletes' grades may be withheld from the public pursuant to sections 3(a)(1), 3(a)(3), 3(a)(14) and 14(e) of the Open Records Act.

To secure the protection of section 3(a)(3), a governmental body must demonstrate that requested information relates to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 551 (1990). It is apparent from the records you submitted for our review that NEISD may reasonably anticipate litigation and the requested records relate to the litigation. You may therefore withhold the requested information with the exception of the documents NEISD has agreed to release to the requestor.¹

In reaching this conclusion, however, we assume that the opposing party to the litigation has not previously had access to the records at issue; absent special circumstances, once information has been obtained by all parties to the litigation, *e.g.*, through discovery or otherwise, no section 3(a)(3) interest exists with respect to that information. Open Records Decision Nos. 349, 320 (1982). If the opposing parties in the litigation have seen

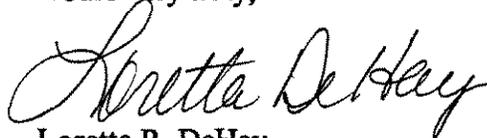
¹In view of our determination that the records are excepted from disclosure by section 3(a)(3), we need not address the applicability of sections 3(a)(1), 3(a)(14) and 14(e).

or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 3(a)(3).

We also note that because section 3(a)(3) protects only information that is relevant to the litigation, this section is inapplicable to documents that the presiding judge has ruled undiscoverable because they lack relevance to the lawsuit. Finally, the applicability of section 3(a)(3) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

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 contact our office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Opinion Committee

LRD/CAB/le

Ref.: ID# 19546

Enclosures: submitted documents

cc: Ms. Rebecca L. Galvan
Attorney at Law
1806 Tower Life Building
San Antonio, Texas 78205
(w/o enclosures)