



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 14, 1993

Mr. Kevin T. O'Hanlon
Chief Legal Counsel
Texas Education Agency
1701 North Congress Avenue
Austin, Texas 78701-1494

OR93-303

Dear Mr. O'Hanlon:

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# 19216.

The Texas Education Agency has received a request for a copy of an investigative report regarding Olton Independent School District. You have submitted the report to us for review and claim that it constitutes "inter-agency or intra-agency memorandums or letters which would not be available by law to a party in litigation with the agency" under section 3(a)(11) of the act and, therefore, is excepted from public disclosure.¹

For several months now, the effect of the section 3(a)(11) exception has been the focus of litigation. In *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ), the Third Court of Appeals recently held that section 3(a)(11) "exempts those documents, and only those documents, normally privileged in the civil discovery context." *Gilbreath* at 413. The court has since denied a motion for rehearing this case.

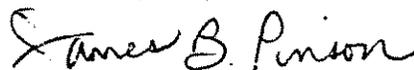
We are currently reviewing the status of the section 3(a)(11) exception in light of the *Gilbreath* decision. In the meantime, we are returning your request to you and asking that you once again review the information and your initial decision to seek closure of this information. We remind you that it is within the discretion of governmental bodies to release information that may be covered by section 3(a)(11). If, as a result of your review,

¹In addition, you claim that, until the report becomes final, the draft report constitutes a confidential notice to the Olton Independent School District under section 21.757(a)(1) of the Education Code and is therefore excepted from required public disclosure under section 3(a)(1) of the Open Records Act. We understand that the report has been finalized. We assume, therefore, that you no longer view the draft report as a confidential notice under section 21.757(a)(1) of the Education Code. Accordingly, we do not address the applicability of section 3(a)(1) at this time.

you still desire to seek closure of the information, you must re-submit your request and the documents at issue, along with your arguments for withholding the information pursuant to section 3(a)(11) or any other exception that you have previously raised. You must submit these materials within 15 days of the date of this letter. This office will then review your request in accordance with the *Gilbreath* decision. If you do not timely resubmit the request, we will presume that you have released this information.

If you have questions about this ruling, please contact our office.

Yours very truly,



James B. Pinson
Assistant Attorney General
Opinion Committee

JBP/GCK/le

Ref.: ID# 19216

cc: Ms. Holly S. Taebel
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