Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 29, 1993

Ms. Chris Elizalde
Walsh, Anderson, Underwood, Schulze
and Aldridge, P. C.
P. O. Box 2156
Austin, Texas 78752

OR93-376

Dear Ms. Elizalde:

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# 20300.

The Harlingen Consolidated Independent School District (the "school district") has received a request for "[t]he name of [the school district] bus driver No. 131 who resigned on 5/7/93 in lieu of being fired following a district investigation." The school district contends the information is excepted under sections 3(a)(1), 3(a)(2), and 3(a)(11) of the Open Records Act. We note that this is a request for factual information, not a request for records. Governmental bodies are not required to answer general inquiries. Open Records Decision Nos. 563 at 8, 555 (1990). Because the school district appears to have treated the query as a request for records, however, we will address the arguments you have raised in reference to this information.

Section 3(a)(1) excepts "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." In order for information to be brought within the common-law right of privacy under section 3(a)(1), the information must meet the criteria set out in *Industrial Found. of the S. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The court sets out that information is excepted from mandatory disclosure under section 3(a)(1) only if (1) the information contains "highly intimate or embarrassing facts about a person's private affairs, such that its publication would be highly objectionable to a person of ordinary sensibilities" and (2) "the information is not of legitimate concern to the public." 540 S.W.2d at 683, 685; *see also* Open Records Decision No. 142 (1976) at 4.

You contend that the release of the bus driver's name would reveal highly embarrassing facts and that the information is not of legitimate concern to the public since the individual is no longer operating a school bus. We disagree. The test for

common-law privacy as set out by the *Industrial Foundation of the South* court specifies that "[t]he first requirement for wrongful publication of private information is that the information contain highly intimate or embarrassing facts about a person's *private affairs*." 540 S.W.2d at 683 (emphasis added). The job performance of a public employee does not generally constitute "a person's private affairs." Open Records Decision No. 470 (1987) at 4. Moreover, the public has a legitimate interest in the job performance of a public employee as well as the reason for a public employee's resignation. *Id.*; Open Records Decision No. 329 (1982). You also argue that the "only purpose the release of the name would serve would be to hold the individual up to scorn and ridicule." The interest of the requestor and the purposes for which he or she seeks the information are not relevant to the determination whether information is public information under the Open Records Act. 540 S.W.2d at 685. Accordingly, you may not withhold the name of the bus driver under section 3(a)(1) of the Open Records Act.

Section 3(a)(2) excepts

> information in personnel files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, and transcripts of professional public school employees; provided, however, that nothing in this section shall be construed to exempt from disclosure the degree obtained and the curriculum on such transcripts of professional public school employees, and further provided that all information in personnel files of an individual employee within a governmental body is to be made available to that individual employee or his designated representative as is public information under this Act.

Section 3(a)(2) protects personnel file information only if its release would cause an invasion of privacy under the test articulated for common-law privacy under section 3(a)(1). *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.) (court ruled that test to be applied in decision under section 3(a)(2) was the same as that delineated in *Industrial Foundation of the South* for section 3(a)(1)). As we have already determined that you may not withhold the information under that test, you may not withhold the requested information under section 3(a)(2).[1]

---

[1]The name of the bus driver is a factual matter of record and not the type of information section 3(a)(11) was designed to except. Section 3(a)(11) "is intended to protect advice and opinions on policy matters and to encourage frank and open discussion within [an] agency in connection with its decision-making processes." *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 412 (Tex. App.--Austin 1992, no writ).

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 this office.

Yours very truly,

Mary R. Crouter
Assistant Attorney General
Opinion Committee

MRC/LBC/jmn

Ref.: ID# 20300

Enclosures: Marked documents

cc: Mr. Robert Guevara
Valley Morning Star
1310 South Commerce
Harlingen, Texas 78550
(w/o enclosures)