



# The Attorney General of Texas

October 29, 1980

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Open Records Decision No. 257

Re: Whether the identity of a person applying for a position with a governmental agency constitutes public information under the Open Records Act

Gentlemen:

You have requested our decision under the Open Records Act, article 6252-17a, V.T.C.S., as to whether the identity of a person who has applied for a position with a governmental agency constitutes public information. Mr. Bingham asks whether the Austin Independent School District should release the names of unsuccessful applicants for the position of school superintendent. Mr. Nordhaus inquires whether a list of finalists for the position of chief of police of the city of Plano is available to the public.

This office has on several occasions addressed similar issues. In Open Records Decision No. 188 (1978), it was held that a city should disclose the names of individuals seeking appointment as municipal court judge. In Open Records Decision No. 212 (1978), it was said that disclosure of a person's recommendation of himself for appointment by the governor did not on its face constitute an invasion of his privacy. Finally, in Open Records Decision No. 223 (1979), it was concluded that the names of applicants for the position of school superintendent need not be revealed where the applicant was able to demonstrate that release of his name was likely to have an adverse effect on his current employment.

Open Records Decision No. 223 was based primarily upon a lower level appellate decision from Florida, Byron, Harless, Schaffer, Reid and Associates, Inc. v. State ex rel. Schellenberg, 360 So. 2d 83 (Fla. App. 1978). That decision was recently reversed by the Florida Supreme Court. Shevin v. Byron, Harless, Schaffer, etc., 379 So. 2d 633 (Fla. 1980). Since Open Records Decision No. 223 departed from the principle previously established by this office regarding release of information about applicants for employment, the reversal of the Byron, Harless, Schaffer case makes it imperative that we reconsider that decision. We believe it is necessary to re-evaluate the concept of privacy under the Open Records Act in terms of

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the language used by the Texas Supreme Court in Industrial Foundation of the South v. Texas Industrial Accident Board, 540 S.W. 2d 668 (Tex. 1976).

In Industrial Accident Board, the supreme court considered the two kinds of privacy interests arising from section 3(a)(1) of the act. A claim of constitutional privacy is available only if the subject matter relates to marriage, procreation, contraception, family relationships, or child rearing and education. 540 S.W. 2d at 678-79. In order to be excepted under the doctrine of common law privacy, on the other hand, information must contain highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and, in addition, the information must be of no legitimate concern to the public. 540 S.W. 2d at 685.

The Open Records Act itself recognizes a third kind of privacy interest. Information in personnel files is excepted from disclosure if its release would constitute a "clearly unwarranted invasion of personal privacy." This standard is the one relied upon in Open Records Decision No. 223. It is our opinion that the release of these applicants' names does not offend this standard. Cf. V.T.C.S. art. 6252-17a, §6(2)(names of public employees are public information).

The request to the Austin Independent School District seeks the names and addresses of all original applicants for the position of superintendent of schools, as well as the names of the seven finalists selected by a screening committee. The request to the city of Plano seeks the names of the eleven finalists for the position of chief of police. This information, consisting as it does merely of names and addresses, has no relation to any of the "zones of privacy" delineated by the United States Supreme Court and adopted by the Texas Supreme Court in Industrial Accident Board, and thus, its disclosure could not possibly infringe upon the constitutional privacy of any individual.

The test under the standard of common law privacy is not as straightforward in its application, but we believe that certain of our past decisions may be instructive in this regard. Open Records Decision No. 212, which dealt with recommendations to the governor regarding appointments, relied on five prior opinions for the observation that:

...while the content of a communication might be confidential and thus not subject to disclosure under the terms of the Act, the fact of a communication itself [is] not shielded from disclosure.

The opinion concluded:

We do not believe the fact that a person has recommended himself or another for appointment by the governor meets the test of disclosing 'highly intimate or embarrassing facts the publication of which would be highly objectionable to a

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reasonable person.' The content of a particular letter might disclose highly intimate or embarrassing facts, but we do not think that the fact of a favorable recommendation can be considered per se an invasion of the privacy of either the person recommended or the person making the recommendation.

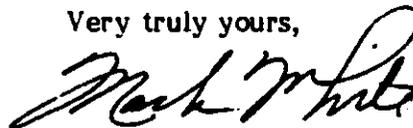
In our view, the proper standard for common law privacy was applied in Open Records Decision No. 212, and its application to the requests before us compel the conclusion that disclosure of the names of applicants for the positions of school superintendent and police chief does not infringe upon the common law privacy of any person.

Even if these applicants were able to make the requisite showing that disclosure of their names reveals "highly intimate and embarrassing facts," however, the common law privacy test requires that the information be of no legitimate concern to the public. In Open Records Decision No. 188, which held disclosable the names of applicants for the position of municipal judge, it was said:

A person who seeks governmental office holds himself up to close public scrutiny. . . . When a person seeks a public office he places his character and his qualifications for the office in issue. . . . We believe the qualifications of appointed judges are an appropriate topic for public debate.

In Open Records Decision No. 169 (1977), this office held that disclosure of the home addresses of public employees was not prohibited by principles of common law privacy except in very exceptional circumstances, even though the public interest in disclosing such information was minimal. In the cases before us, the public interest is not at all minimal. As in Open Records Decision No. 188, we believe the qualifications of candidates for the positions of police chief and school superintendent "are an appropriate topic for public debate." A member of the public has a strong interest in being apprised of the names of persons being considered for important public positions, so that, prior to selection, he may attempt to influence the choice, and, after selection, he may evaluate the wisdom of the choice. We realize the importance of not deterring qualified persons from seeking public employment. Nonetheless, we believe the weight of authority requires us to find this information available to the public. It is our decision that the names of applicants for the position of superintendent of schools of the Austin Independent School District, and for the position of chief of police of the city of Plano, are not excepted from disclosure under any provision of the Open Records Act, and, as a result, should be disclosed. Open Records Decision No. 223 (1979) is hereby overruled.

Very truly yours,



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