



**THE ATTORNEY GENERAL
OF TEXAS**

July 16, 1987

**JIM MATTOX
ATTORNEY GENERAL**

Mr. Bruce Hineman
Executive Secretary
Teacher Retirement System
of Texas
1001 Trinity Street
Austin, Texas 78701

Open Records Decision No. 471

Re: Whether information in files of members of the Teacher Retirement System is protected from required disclosure under the Open Records Act, article 6252-17a, V.T.C.S.

Dear Mr. Hineman:

You have informed us that the Teacher Retirement System has been asked to release the following information concerning certain individuals: current or last known employer-school district, salary, position, experience, tenure, education level, home address, and home telephone number. Your request letter states:

With respect to the enclosed request, the Teacher Retirement System (TRS) records would contain the current or last known public education employer, annual salary (for TRS credit purposes), the number of years of membership credit with the retirement system, and home addresses. This information would be in the individual member records of each person named for whom records are maintained. All other information requested is not maintained by TRS. The most likely alternate source for this information would be the public school employer:

You asked:

Is the information requested by the enclosed letter that is contained in individual files of certain members of the retirement system subject to disclosure under the Open Records Act?

You cited Open Records Decision No. 104 (1975) for the proposition that this information is confidential. This decision held that teacher retirement records regarding an individual's account were protected from disclosure by subsection 2(a) of article 6228i, V.T.C.S., which provided in part:

It is expressly provided that records of all individual members and beneficiaries in the custody of the state retirement systems named in this Act are to be considered in the manner of personnel records, and such records are hereby deemed to be confidential information under the provisions of [the Open Records Act].

Acts 1975, 64th Leg., ch. 81, §2, at 222 (repealed by Acts 1977, 65th Leg., ch. 570, §9, at 1410). Article 6228i has been repealed, but its substance is now found in section 13.402 of Title 110B, Public Retirement Systems, which states:

Records of members and beneficiaries of a statewide retirement system that are in the custody of the system are considered to be personnel records and confidential information under [the Open Records Act], except that the records or information in the records may be transferred between statewide retirement systems to the extent necessary to administer the proportionate retirement program provided by this chapter.

In Calvert v. Employees Retirement System of Texas, 648 S.W.2d 418 (Tex. App. - Austin 1983, writ ref'd n.r.e.), the court considered whether articles 6228a and 6228k, V.T.C.S., excepted from required disclosure the names and addresses of retired appellate judges. Section 9C of article 6228a provided in relevant part:

It is expressly provided that records, in the custody of the System, of all individual members and beneficiaries under Retirement Acts administered by the System are to be considered in the manner of personnel records and such records are hereby deemed to be confidential information under the provisions of [the Open Records Act].

Acts 1975, 64th Leg., ch. 218, §12, at 560 (repealed by Acts 1981, 67th Leg., ch. 453, §3(3), at 2063). Section 7 of article 6228k, V.T.C.S., provided in part:

Records of all individual members and beneficiaries in the custody of statewide retirement systems are personnel records and are deemed to be confidential information under the provisions of [the Open Records Act].

Acts 1977, 65th Leg., ch. 570, at 1410 (repealed by Acts 1981, 67th Leg., ch. 453, 3(8), at 2063). The court held as follows:

Appellant reasons, on the other hand, that art. 6228k §7 and art. 6228a §9C placed retirement records in the category of personnel records, which are dealt with in exception 3(a)(2) of art. 6252-17a, and therefore are confidential only if 'disclosure would constitute a clearly unwarranted invasion of personal privacy.' This Court has concluded that appellant's argument is correct.

The language of §9C provides that the records in the custody of the System 'are to be considered in the manner of personnel records and such records are hereby deemed confidential information' under the Open Records Act. Similarly, §7 provides that records in the custody of the System 'are personnel records and are deemed to be confidential information' under the Open Records Act. Had the legislature intended to insure that retirement records or files be entirely confidential, it could have easily achieved that result by omitting all reference to personnel records or files. Instead, both §§7 and 9C direct that such retirement records be regarded as personnel files. The specific direction in §§7 and 9C most surely points to the application of §3(a)(2).

Calvert v. Employees Retirement System, 648 S.W.2d at 420-21.

This excerpt establishes that it was the reference to "personnel records" in the relevant statutes that convinced the court that these statutes should be construed in the light of section 3(a)(2) of the Open Records Act. The statute before us, section 13.402 of Title 110B, states that records of members of the Teacher Retirement System "are considered to be personnel records and confidential information under" the Open Records Act. The wording of this phrase is in all material respects the same as that of the statutes involved in Calvert; this wording, moreover, has not been altered in the four years since Calvert was handed down. We must therefore conclude that Calvert compels the view that section 13.402 protects records of TRS members only if release of the records would cause a "clearly unwarranted invasion of personal privacy" within section 3(a)(2) of the Open Records Act.

In Hubert v. Harte-Hanks Texas Newspapers, Inc., 652 S.W.2d 546 (Tex. App. - Austin 1983, writ ref'd n.r.e.), the court held that section 3(a)(2) protects personnel records only if their release would cause an invasion of privacy under the standards used to apply section 3(a)(1) of the act. Under that exception, as construed in Industrial Foundation of the South v. Texas Industrial Accident Board, 540 S.W.2d 668, 685 (Tex. 1976), information is protected on common-law privacy

grounds only if it is highly intimate or embarrassing such that a reasonable person would object to its release, and only if it is of no legitimate concern to the public. In our opinion, the application of this test requires the conclusion that none of the information at issue here is excepted from required disclosure. None of it is highly intimate or embarrassing, so the threshold requirement of the common-law privacy test has not been satisfied here; for this reason, we need not decide whether the other requirements of this test have been met. In this connection, we note that Calvert held that neither the names nor the addresses of retired appellate judges were protected on section 3(a)(2) grounds. This supports our conclusion that the information before us is not protected under section 3(a)(2).

Section 3(a)(17) of the Open Records Act excepts the home addresses and telephone numbers of employees who invoke section 3A of the act. You have not, however, informed us that anyone mentioned in this request has done so. If an employee has invoked his section 3A exception in his employing school district, the Teacher Retirement System may not release his home address and telephone number.

S U M M A R Y

Information in the files of members of the Teachers Retirement System is protected from required disclosure only if its release would cause a "clearly unwarranted invasion of personal privacy" within section 3(a)(2) of the Open Records Act, article 6252-17a, V.T.C.S. No such invasion would be caused by the release of the information at issue here.

Very truly yours



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