



**THE ATTORNEY GENERAL
OF TEXAS**

April 24, 1989

**JIM MATTOX
ATTORNEY GENERAL**

Ms. Janet Little Horton
Bracewell & Patterson
2900 South Tower Pennzoil Place
Houston, Texas 77002-2781

Dear Ms. Horton:

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# 3543; this decision is OR89-132.

Under the Open Records Act, all information held by governmental bodies is open unless the information falls within one of the act's specific exceptions to disclosure. The act places on the custodian of records the burden of proving that records are excepted from public disclosure. If a governmental body fails to claim an exception, the exception is ordinarily waived unless the information is deemed confidential under the act. See Attorney General Opinion JM-672 (1987). The act does not require this office to raise and consider exceptions that you have not raised.

On May 13, 1988, on behalf of the Brazosport Independent School District, you asked whether section 3(a)(3), the litigation exception, protects from disclosure the college transcripts of certain teachers involved in administrative hearings related to special evaluations of school children. Later, you supplemented this request to claim protection under privacy principles incorporated in sections 3(a)(1) and 3(a)(2).

To claim section 3(a)(3) the governmental body must show: 1) that litigation is actually pending or reasonably anticipated; and 2) that the information in question relates to the litigation such that withholding the information is necessary to preserve the governmental body's strategy or legal interests in the litigation. Open records Decision No. 478 (1987). "Litigation" can include contested administrative hearings. Although the records at issue relate to the qualifications of the teachers at issue in these hearings, they do not relate to the act or omission that gave

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rise to the hearing. Therefore, they do not relate to litigation within the meaning of section 3(a)(3).

With regard to your claims regarding privacy under sections 3(a)(1) and 3(a)(2), this office has issued several previous determinations on the public availability of professional public school employees' college transcripts. See, e.g., Open Records Decision Nos. 467 (1987) (college transcripts of teachers in McAllen Independent School District are public); 284 (1981) (college transcripts and teacher certificates in Richardson Independent School District are public); Informal Open Records Decision No. OR88-080 (1988) (college transcripts of teachers and administrators in the Salado Independent School District are public). Additionally, in Klein Indep. School Dist. v. Mattox, 830 F.2d 576 (5th Cir. 1987), cert. denied, 108 S.Ct. 1473 (1988), the Fifth Circuit upheld an informal open records decision that college transcripts of teachers in the Klein Independent School District are public.

These previous determinations are not affected by the Texas Supreme Court's decision in Texas State Employees Union v. Texas Dep't of Mental Health and Mental Retardation, 746 S.W.2d 203 (Tex. 1987). The decision in Texas State Employees Union is not applicable to the disclosure of the qualifications of professional public school employees to teach, i.e., courses taken, grades received, and general academic performance. Disclosing the job qualifications that a public employee has submitted to a public employer is not the equivalent of asking public employees the intrusive type of questions at issue in the Texas State Employees Union case, i.e., whether their parents use drugs or whether they beat their children.

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 refer to OR89-132.

Yours very truly,
Open Government Section
of the Opinion Committee 

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of the Opinion Committee
Prepared by Jennifer S. Riggs
Chief, Open Government Section

JSR/bc

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Ref.: ID# 3543
ID# 3636
ID# 3733
ID# 4410

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