



**THE ATTORNEY GENERAL
OF TEXAS**

April 24, 1989

**JIM MATTOX
ATTORNEY GENERAL**

Mr. David Greenfield
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Independent School District
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Dear Mr. Greenfield:

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# 6194; this decision is OR89-135.

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.

The Temple Independent School District received an open records request for the identities of job applicants for the position of Superintendent of Schools. You contend that subsections 3(a)(1) and 3(a)(2) of the Open Records Act protect this information from required public disclosure.

You state that many of the applicants asked the school district not to disclose the fact that they applied for the position. Information is not confidential under the Open Records Act simply because the party submitting the information anticipates or requests that it be kept confidential. Industrial Found. of the South v. Texas Indus. Accident Bd., 540 S.W.2d 668, 687 (Tex. 1976), cert. denied 430 U.S. 930 (1977). Consequently, unless the names fall within one of the act's exceptions to disclosure, they must be released.

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The test for section 3(a)(2) protection is the same as that for information protected by common-law privacy under section 3(a)(1): to be protected from required disclosure the information must contain highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and the information must be of no legitimate concern to the public. Hubert v. Harte-Hanks Texas Newspapers, Inc., 652 S.W.2d 546 (Tex. App. - Austin 1983, writ ref'd n.r.e.). Release of the names of applicants for public employment do not meet both of these tests. Even if an applicant were to suffer extreme embarrassment by having his or her name revealed, the public maintains a strong interest in being apprised of the names of persons being considered for important public positions; prior to selection, they may attempt to influence the choice, and after selection, they may evaluate the wisdom of the choice. See Open Records Decision No. 257 (1980).

Your primary objection to the release of the applicants' identities is that the applicants' "current employers might use the fact that they have applied for a different job against them." Open Records Decision No. 439 (1986) addressed similar considerations and relied on the Texas courts' interpretations of the Open Records Act:

[sections] 1 and 14(d) of the Open Records Act command that the provisions of the Act are to be liberally construed to favor disclosure of public records. The practical effect of a statutory directive for liberal construction of an act is that close judgment calls are to be resolved in favor of the stated purpose of the legislation. . . . [A] liberal construction of the Open Records Act seems to compel disclosure of information, even when disclosure might cause inconvenience or embarrassment for some persons. (Emphasis added.)

Open Records Decision No. 439 (quoting from Hubert v. Harte-Hanks Texas Newspapers, Inc., 652 S.W.2d 546, 551-52 (Tex. App. -- Austin 1983, writ ref'd n.r.e.)).

The names of applicants for Superintendent of Schools is public information and should be released immediately.

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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 OR89-135.

Yours very truly,

Open Government Section
of the Opinion Committee 

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

JSR/RWP/bc

Copies to: Temple Daily Telegram
KWTX

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