



**THE ATTORNEY GENERAL  
OF TEXAS**

**JIM MATTOX  
ATTORNEY GENERAL**

June 13, 1989

Mr. Ted Dockery  
Superintendent of Schools  
Bandera Independent School District  
P. O. Box 727  
Bandera, Texas 78003

Dear Mr. Dockery:

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# 6048; this decision is OR89-185.

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 Bandera Independent School District (BISD) received a request to view the "personnel records for all Bandera Independent School District bus drivers," including legal names, drivers license numbers, all public records and reports, and all complaints, evaluations, and investigations, including Texas Department of Public Safety, driving records. You have provided the following for our review: the driving records of all bus drivers employed by BISD; School Bus Driving Training Verification forms; medical history forms; and letters from parents and/or citizens regarding the performance of the drivers. You contend that release of this information would "constitute an unwarranted invasion of personal privacy of bus drivers and [individual] students."

Your letter of March 10, 1989, however, indicates that the requestor received copies of the School Bus Driving Verification forms issued to the BISD from the Texas Education Agency (TEA). If a governmental body releases information to a member of the public, the act's exceptions to disclosure are waived unless the information is deemed confidential under the act. Open Records Decision No. 463 (1987). Because the School Bus Driving Verification forms have been released to the requestor by the TEA, and because no statutory exception prevents release of the forms, the verification forms are public.

At issue is the release of the driving records of BISD school bus drivers compiled by the Texas Department of Safety. If a statute applicable to the governmental body declares that certain information is public, the governmental body must release it. Open Records Decision No. 158 (1977). Article 6687b, V.T.C.S., governs the issuance of driver's, chauffeur's and commercial operator's licenses. Section 21, entitled "Records to be kept by the Department," provides in relevant part:

(e) The Department is authorized to provide information pertaining to an individual's date of birth, current license status, most recent address, and reported traffic law convictions and motor vehicle accidents, by date and location, occurring within the immediate past three (3) year period when requested from the records of the Department on written request . . . . (Emphasis added.)

Section 21(e) expressly makes the type of driver's license information at issue available to the public. Additionally, article 6687b affords to the public a qualified right of access to license information in the files of the Department of Public Safety. See Open Records Decision No. 465 (1987); cf. Open Records Decision No. 498 (1988). The transfer of this information from the Department of Public Safety to BISD does not diminish the fact that this information is designated public by statute.

Generally, the attorney general will not raise exceptions under the act that the governmental body has failed to raise. However, because the release of confidential information could implicate the rights of third parties and because its improper release constitutes a misdemeanor, the

Mr. Ted Dockery  
June 13, 1989  
Page 3

attorney general will raise section 3(a)(1) on behalf of governmental bodies. Section 3(a)(1) protects "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." This section incorporates specific statutes that protect information from public disclosure. The language of the relevant confidentiality statute controls the scope of protection.

Section 5(a) of article 6687b, V.T.C.S., requires that all applicants for the position of school bus driver submit to a physical examination. Section 21A governs maintenance of medical information gathered pursuant to section 5(a). Section 21A(e) provides, in part:

(1) All records, reports, and testimony regarding to the medical condition of an applicant or licensee are for the confidential use of the [medical advisory] board or [of the department Public Safety] and as such are privileged information. Such information may not be divulged to any person or used as evidence in any trial. (Emphasis added.)

This section expressly makes the medical information at issue confidential. Further, all medical records "generated by a physician" in a public employee's personnel file are excepted from disclosure by section 3(a)(1) of the Open Records Act. See Open Records Decision No. 316 (1982) (discussing the availability of information in a police officer's personnel file). You may withhold the medical information included in the documents at issue.

You also ask about the availability of complaints received by BISD from parents and/or concerned citizens regarding the driving performance of the school bus drivers. You contend that the disclosure of this information "would constitute an unwarranted invasion of personal privacy of bus drivers and students."

Section 3(a)(2) of the act protects "information in personnel files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Section 3(a)(2), however, does not except any more information than that excepted by section 3(a)(1). Hubert v. Harte-Hanks Texas Newspapers, Inc., 652 S.W.2d 546, 550 (Tex. App. - Austin 1983, writ ref'd n.r.e.). Information may be withheld under section 3(a)(1) only if: 1) the information

Mr. Ted Dockery  
June 13, 1989  
Page 4

contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person, and 2) the information is of no legitimate concern to the public. See Industrial Found. of the South v. Texas Indus. Accident Bd., 540 S.W.2d 668, 683-85 (Tex. 1976), cert. denied, 430 U.S. 930 (1977). Information concerning a bus driver's job performance driving daily school bus routes and handling discipline incidents on school buses cannot be considered private facts under the test articulated for section 3(a)(1). Further, the public has a legitimate right to know of school bus "incidents" and driver performance. The letters from concerned parents and citizens are public.

Although you do not raise section 3(a)(14) of the Open Records Act, because release of some of the information at issue affects the rights of students, we will raise this exception on your behalf. Section 3(a)(14) protects from disclosure subjective personal information about students. Section 14(e) of the act provides:

Nothing in this Act shall be construed to require the release of information contained in education records of any educational agency or institution except in conformity with the provisions of the Family Educational Rights and Privacy Act of 1974, as enacted by Section 513 of Public Law 93-380, codified as Title 20 U.S.C.A. Section 1232g, as amended. (The Buckley Amendment.)

The Buckley Amendment protects from disclosure education records and personally identifiable information about students contained within them. "Education records" are defined as those records that contain information directly related to a student and that are maintained by an educational agency or institution. 20 U.S.C. § 1232g(a)(4). You must delete from the letters any reference that identifies students involved in discipline incidents on school buses.

Mr. Ted Dockery  
June 13, 1989  
Page 5

You must release all of the information that has been determined to be public by this ruling. 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 OR89-185.

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/FAF/bc

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Enclosures