



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

July 18, 1989

Mr. Bob E. Bradley
Executive Director
Texas State Board of Public Accountancy
1033 La Posada, Suite 340
Austin, Texas 78752-3892

Dear Mr. Bradley:

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# 6550; this decision is OR89-215.

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 State Board of Public Accountancy received a request from Mr. William A. Sansing for information about complaints against him and about the termination of his employment. You ask generally whether the requested material is subject to the Open Records Act, whether the requested information should be placed in Mr. Sansing's personnel file, and whether the information may be maintained in the executive director's separate, "personal" files. You also ask whether the information is public and must be disclosed under the Open Records Act.

Your request is primarily a generalized request for advice as to appropriate agency action relevant to the documents requested. You do not indicate which exception from disclosure you believe applies to the information requested, or whether you in fact wish to withhold the information.

Regarding your inquiry as to whether you should put the the requested information into Mr. Sansing's personnel file,

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you should note that all information relating to an employee and his employment, whether or not contained in a particular "file," constitutes information relevant to the employment relationship and is therefore part of an employee's personnel file. See Open Records Decision No. 327 (1982). Therefore, segregating the requested information into a separate file does not except it from disclosure under the act.

Except for information unavailable to the public because of an employee's right to privacy, the availability of personnel records to an employee is identical to its availability to the public. See Open Records Decision No. 481 (1987). By amendment to the Open Records Act passed by the 71st Legislature, effective September 1, 1989, a special right of access to records held by a governmental body is granted to the person to whom the records relate, beyond the right of access of the general public to that information. See H.B. 1285, Acts 1989, 71st Leg., ch. ____, § ____, at _____.

The fact that information is obtained under the aegis of confidentiality does not necessarily remove it from the act's coverage. See Open Records Decision No. 64 (1975). Prior decisions have held that complaints against an employee by co-workers are not excepted from disclosure to the employee about whom the complaints were made under §3(a)(1). See Open Records Decision No. 515 (1988). The complaints in question here are covered by these prior decisions. They must be released to the requestor. We do not decide whether the information may be released to any person besides Mr. Sansing or his authorized representative.

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 OR89-215.

Yours very truly,

*Open Government Section
of the Opinion Committee*

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Prepared by David A. Newton
Assistant Attorney General

DAN/mc

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cc: Mr. William A. Sansing
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