



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

August 4, 1989

Mr. Donald Boehm
Assistant Superintendent of Legal Services
Houston Independent School District
3830 Richmond Avenue
Houston, Texas 77207-5838

Dear Mr. Boehm:

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# 6299; this decision is OR89-235.

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 Houston Independent School District received a request from a teacher for his "entire personnel file." Included in the teacher's personnel file are notes and memoranda concerning alleged incidents of sexual misconduct or other inappropriate behavior on the part of the teacher. These are of two categories; some are notes hand- or type-written by adult personnel of the school district, in which individual students are named, and others are handwritten notes or statements from students containing narrative descriptions of alleged incidents occurring between themselves and the named teacher or other students and the named teacher. The school district seeks to withhold these documents, or the information contained in them, on the grounds that such information constitutes student records and is excepted from disclosure under sections 3(a)(1) and 3(a)(14) of the Open Records Act.

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Comments by identifiable students regarding a teacher or faculty member are excepted from disclosure by the Buckley amendment, 20 U.S.C.A. 1232g, as incorporated into sections 3(a)(14) and 14(e) of the Open Records Act. See Open Records Decision No. 332 (1982). In Open Records Decision No. 332 this office held that sections 3(a)(14) and 14(e) could not be used to withhold entire complaint letters from parents concerning a teacher, but only information that identified students. In Open Records Decision No. 327 (1982), this office held that handwritten notes made by a principal and an athletic director about a meeting with a student concerning a physical education teacher were not excepted under section 3(a)(14) except for those parts identifying a particular student. Information that identifies a particular student must be deleted only to the extent reasonable and necessary to avoid personally identifying that student. Open Records Decision No. 206 (1978).

In this case, the notes or memoranda from adult personnel, whether typed or handwritten, after the deletions of information which personally identifies students, are not excepted from disclosure under section 3(a)(14).

However, handwritten student statements, even if unsigned, are excepted from disclosure if the identity of the student is easily traceable through the handwriting, style of expression, or the particular incidents related in the comments. Open Records Decision Nos. 224 (1979); 214 (1978); 206 (1978). Therefore, the handwritten notes from students, if the identity of the student writer is easily traceable through handwriting, style of expression, or because of the particular incidents related in the comments, are also excepted from disclosure under section 3(a)(14).

The requestor asserts that under section 3(a)(2) he has a right to all information in his own personnel file, whether or not otherwise excepted from disclosure to the general public. However, a public employee has no special right of access to information in his personnel file. Cf. Open Records Decision No. 481 (1987). Even if information comprises part of a personnel file, that employee does not have a special right of access under the Open Records Act to that information if the information is excepted from disclosure under another section of the act. Open Records Decision No. 288 (1981). But see Attorney General Opinions H-626 (1975); H-249 (1974).

Because section 3(a)(14) applies to the information sought, this decision does not address the claim that the

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information is excepted under section 3(a)(1) as well. 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 OR89-235.

Yours very truly,

*Open Government Section
of the Opinion Committee*



Open Government Section
of the Opinion Committee
Prepared by David A. Newton
Assistant Attorney General

DAN/bc

Ref.: ID# 6299

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