



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

August 15, 1989

Mr. T. John Ward
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Attorneys for Pine Tree
Independent School District
211 E. Tyler
MBank Building, Sixth Floor
Longview, Texas 75601

Dear Mr. Ward:

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# 7128; this decision is OR89-253.

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 Pine Tree Independent School District (PTISD) received an open records request for a letter sent to the PTISD by the Pine Tree Band Boosters Club. The letter concerned a particular student who had been awarded and subsequently denied a scholarship by the Boosters Club. The letter also expressed support for the band director who had received a reprimand for misconduct regarding the student. You contend that you may withhold the letter from the requestor, who is the attorney for the student, pursuant to subsections 3(a)(2) and (3) of the Open Records Act.

You contend that section 3(a)(3) of the act, known as the litigation exception, protects the letter because the requestor/attorney has expressed the opinion that the Booster Club is "an arm of the School District." From this you conclude that the attorney intends to sue the PTISD for

the actions of the Booster Club. In order to trigger the protection of section 3(a)(3), the governmental entity must first demonstrate that litigation is pending or reasonably anticipated. Open Records Decision No. 452 (1986). You have not shown that the possibility of litigation against the PTISD is more than mere conjecture; you may not, therefore, withhold the letter pursuant to section 3(a)(3). See Open Records Decision No. 328 (1982).

Section 3(a)(2) protects information in personnel files, but only if the information 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 the information is 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.). The information at issue does not meet these tests. You may not withhold the letter pursuant to section 3(a)(2).

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 OR89-253.

Yours very truly,

Open Government Section
of the Opinion Committee

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of the Opinion Committee

Approved by Jennifer S. Riggs
Chief, Open Government Section

JSR/RWP/bc

Ref.: ID# 7128

cc: Mr. Frank M. Mason
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