



**THE ATTORNEY GENERAL
OF TEXAS.**

October 11, 1989

**JIM MATTOX
ATTORNEY GENERAL**

Mr. H. Wayne Hendrick
Superintendent of Schools
Plano Independent School District
1517 Avenue H
Plano, Texas 75074

Dear Mr. Hendrick:

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# 7259; this decision is OR89-335.

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 Plano Independent School District received an open records request for documents relating to an investigation of an employee's connection to missing computer equipment. You contend that sections 3(a)(2) and 3(a)(3) of the Open Records Act protect this information from required public disclosure.

Section 3(a)(2) protects information in personnel files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. 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

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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. See Open Records Decision No. 470 (1987) (enclosed). You may not withhold any of the requested information pursuant to section 3(a)(2).

Section 3(a)(3) of the Open Records Act, known as the litigation exception, protects information relating to litigation to which an officer or employee of a state or political subdivision, as a consequence of his office or employment, is or may be a party. To secure the protection of section 3(a)(3), a governmental body must demonstrate that a judicial or quasi-judicial proceeding is pending or reasonably anticipated, Open Records Decision No. 452 (1986), and that the requested material relates to the litigation such that disclosure of the material would adversely affect the governmental body's litigation interests. Open Records Decision No. 493 (1988).

You have not shown that the requested material meets these tests. In fact, you state in your letter to this office that the employee under investigation has already pleaded guilty to criminal charges against him concerning this matter. Further, we note that most of the information in the records at issue has previously been made available to both the prosecutor and the employee under investigation. No section 3(a)(3) interest exists with respect to information already obtained by all parties to the litigation. Open Records Decision No. 349 (1982). Consequently, you may not withhold this information pursuant to section 3(a)(3). This information must be released in its entirety.

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 OR89-335.

Yours very truly,
*Open Government Section
of the Opinion Committee*

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

DAN/bc

Enclosure: ORD-470

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cc: Mr. Curtis Howell
801 E. Plano Parkway
Plano, Texas 75074

Ref.: ID# 7259
ID# 7047