



THE ATTORNEY GENERAL
OF TEXAS

JIM MATTOX
ATTORNEY GENERAL

November 22, 1989

Mr. James E. Belton
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Dear Mr. Belton:

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# 8047; this decision is OR89-400.

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. Attorney General Opinion H-436 (1974). 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 Santa Maria Independent School District (S.M.I.S.D.) received an open records request from the Texas State Teachers Association for all of the district employees' service records for the purpose of determining the amount of sick leave days each employee had accumulated at the end of the 1988-89 school year. You first inquire whether any portions of the service records are protected from public disclosure by section 3(a)(2) of the Open Records Act.

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

Mr. James E. Belton
November 22, 1989
Page 2

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 v. Harte-Hanks Texas Newspapers, 652 S.W.2d 546 (Tex. App. - Austin 1983, writ ref'd n.r.e.). None of the information contained in the service records meets these tests. The service records are public documents; an employee's consent is not necessary in order to release these records. See Open Records Decision No. 336 (1982) (section 3(a)(2) does not protect the amount of and dates of sick leave taken by public employees).

Finally, you ask whether S.M.I.S.D. may simply compile a list of the employees' names and their accumulated sick leave in response to the request. We answer in the negative. The request was for specific public records, not for general information; you must therefore release the service records as requested.

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 OR89-400.

Yours very truly,

Open Government Section
of the Opinion Committee 

Open Government Section
of the Opinion Committee
Approved by Jennifer S. Riggs
Chief, Open Government Section

JSR/RWP/le

Ref.: ID# 8047

cc: Raye Lokey
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