



THE ATTORNEY GENERAL
OF TEXAS

August 22, 1990

JIM MATTOX
ATTORNEY GENERAL

Ms. Nan P. Seidenfeld
Attorney for Lackland I.S.D.
1110 NBC Bank Plaza
112 East Pecan Street
San Antonio, Texas 78205-1533

OR90-399

Dear Ms. Seidenfeld:

You have received a request for certain information pursuant to the Open Records Act, article 5262-17a, V.T.C.S. Your request has been assigned ID# 8945.

The Lackland Independent School District (LISD) received a request from the Lackland Teacher's Association for a copy of a Texas Education Agency (TEA) investigative report of LISD. You assert this report is excepted from required public disclosure based on the Open Records Act, section 3(a)(1), 3(a)(2), 3(a)(3), 3(a)(11), and 3(a)(14). We will address each of these exceptions separately.

You first raise section 3(a)(2) which protects information in personnel files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. You assert that because the report names individuals employed by LISD, the information will become a part of the employment records of those individuals. The test for whether information constitutes personnel information is whether the information bears on the qualification for employment, the terms of employment, the separation from employment, and anything else effecting the employment relationship. See Open Records Decision No. 332 (1982). Information need not actually be in a personnel file to be subject to section 3(a)(2) of the Open Records Act. See Open Records Decision No. 332 (1982). Although portions of the investigative report constitute personnel file information, we conclude that section 3(a)(2) does not except this information from public disclosure.

Section 3(a)(2) protects personnel file information only if its release would cause an invasion of common-law privacy under the test for section 3(a)(1) of the Open Records Act. Hubert v. Harte-Hanks Texas Newspapers, 652 S.W.2d 546 (Tex. App. - Austin 1983, writ ref'd n.r.e.).

Information may be withheld based on common law privacy rights 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 if the information is of no legitimate concern to the public. Industrial Found. of the South v. Texas Indus. Accident Bd., 540 S.W.2d 668 (Tex. 1976), cert. denied, 430 U.S. 930 (1977). The public has a legitimate interest in knowing the results of the investigation of the school district and in knowing the information in the documents which are attached to the report. See Open Records Decision No. 470 (1987).

To secure the protection of section 3(a)(3) of the Open Records Act, a governmental body must demonstrate that litigation is pending or reasonably anticipated. Heard v. Houston Post Co. 684 S.W.2d 210 (Tex. App. - Houston [1st Dist.] 1984, writ ref'd n.r.e.). You contend the contents of the TEA report could potentially lead to litigation in which the district could be a party. You have not demonstrated that any steps toward litigation have been taken; thus, litigation is not reasonably anticipated in this case and section 3(a)(3) does not apply. See Open Records Decision Nos. 555 (1990); 351, 346 (1982).

Next we will consider the application of section 3(a)(11) which excepts only advice, opinion, and recommendation used in the deliberative process of a governmental body. Attorney General Opinion JM-36 (1983). Facts and written observations of facts and events cannot be withheld under section 3(a)(11). Open Records Decision No. 450 (1986). Information protected by section 3(a)(11) must be prepared by a person or entity with an official reason or duty to provide the information. Open Records Decision No. 429 (1985). We have marked the report according to these aforementioned guidelines. Generally, section 3(a)(11) applies in this case to require the withholding of information in only the "Conclusions and Recommendations" section of the report and to several of the documents attached to the report. Section 3(a)(11) does not apply to the letters from the Texas State Teachers Association, the Lackland Teachers Association, or a parent because the letters were not written by one with an official responsibility to do so. See Open Records Decision Nos. 429; 283 (1981).

Finally, we have found on page 5 of the investigative report information that identifies a student. We agree that

section 3(a)(14) excepts any information in the investigative report that identifies a student and we have marked the report accordingly. See Open Records Decision No. 332 (1982).

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 OR90-399.

Yours very truly,



Kay H. Guajardo
Assistant Attorney General
Opinion Committee

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Ref: ID# 8945

Enclosures: Marked Documents