



DAN MORALES  
ATTORNEY GENERAL

Office of the Attorney General  
State of Texas

March 13, 1991

Mr. Philip W. Barnes  
Commissioner of Insurance  
State Board of Insurance  
1110 San Jacinto  
Austin, Texas 78701-1998

OR91-140

Dear Mr. Barnes:

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# 11795.

The State Board of Insurance (the board) received an open records request for the "Investigation and Report prepared by the Internal Audit Division in reference to the travel expenses of" a named employee. Although the board failed to request an open records decision from this office within the requisite ten days after receipt of the open records request, *see* V.T.C.S. art. 6252-17a, § 7(a), you nevertheless contend that the information may be withheld pursuant to section 3(a)(1) and 3(a)(2) of the act because you believe the information to be deemed confidential by law.

Section 3(a)(2) is designed to protect public employees' personal privacy. The scope of section 3(a)(2) protection, however, is very narrow. *See* Open Records Decision No. 336 (1982). 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 v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546, 550 (Tex. App. -- Austin 1983, writ ref'd n.r.e.). The information at issue pertains solely to state board employees' actions as public servants, and as such cannot be deemed to be outside the realm of public interest. Section 3(a)(2) was not intended to protect the type of information at issue here.

You next contend that the requested information is made confidential by V.T.C.S. article 6252-5d. This statute outlines the general responsibilities of state agency internal auditors; it does not, however, contain any provision that makes the type of information at

issue here confidential. Absent such a provision, article 6252-5d does not act to close any of the requested information from the public.

You further contend that sections 3(a)(4) and 3(a)(16) make the information confidential. We note, however, that even if your request for an open records decision had been made in a timely manner, these two sections would not act to protect the information at issue. Section 3(a)(4) is generally invoked to except information submitted to a governmental body as part of a bid or similar proposal, *see, e.g.*, Open Records Decision No. 463 (1987); section 3(a)(4) is clearly inapplicable in this instance. Section 3(a)(16), which protects "the audit working papers of the State Auditor," applies only to the audit working papers of the state auditor and is also inapplicable. *See* Open Records Decision 211 (1978).

Finally, you express concern over the possible injury to the employees' reputations that may result from the release of information. Your concern falls outside the scope of the statutory exceptions of the Open Records Act. The Open Records Act does not authorize governmental bodies to withhold information from the public except as expressly provided. *See* V.T.C.S. art. 6252-17a, §14(b); Open Records Decision No. 419 (1984) and authorities cited therein. *See generally* Open Records Decision No. 579 (1990) (information may not be withheld solely because its release would place individual in a false light) (copy enclosed).

You have not demonstrated that the requested information is deemed confidential by law. The report is therefore presumed to be public, *see* Hancock v. State Board of Insurance, 797 S.W.2d 379 (Tex. App. -- Austin 1990, no writ), and 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 OR91-140.

Yours very truly,



Celeste Baker  
Assistant Attorney General  
Opinion Committee

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Ref.: ID# 11795

Enclosures: Open Records Decision No. 579, 463, 211

cc: Douglas D. Eastwood  
1708 Honeysuckle Lane  
Round Rock, Texas 78664

Deborah L. Churchill  
Staff Attorney  
Mail Code 016-8  
State Board of Insurance  
1110 San Jacinto  
Austin, Texas 78701-1998