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State of Texas

April 16, 1991

Ms. Lynn Rossi Scott
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P. O. Box 13010
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OR91-185

Dear Mr. Scott:

You ask whether certain information regarding the nonrenewal by the Tolar I.S.D. of a school superintendent's contract is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 11708.

We have considered the exceptions you referenced, specifically sections 3(a)(2), 3(a)(3), 3(a)(9), 3(a)(11) and have reviewed the documents at issue.

You advise that it is the board's position that none of the asserted exceptions apply and that the assertion of these exceptions is made by the superintendent. Accordingly, we need not consider the applicability, if any, of sections 3(a)(3), 3(a)(9) or 3(a)(11). All of these exceptions are discretionary, and may be waived by the governmental body. V.T.C.S. art. 6252-17a, section 14(a).

Section 3(a)(1) excepts from public disclosure "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." If information is "confidential" within the meaning of section 3(a)(1), such confidentiality may not be waived by the board of trustees. In Hubert v. Harte-Hanks Texas Newspapers, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.) the court found that personnel file information is confidential under section 3(a)(2) only if the information meets the test articulated in Industrial Found. of the South v. Texas Indus. Accident Bd., 540 S.W.2d 668 (Tex. 1976), *cert denied*, 430 U.S. 931 (1977), for common-law privacy protection under section 3(a)(1). Accordingly sections 3(a)(1) and 3(a)(2) may be considered together.

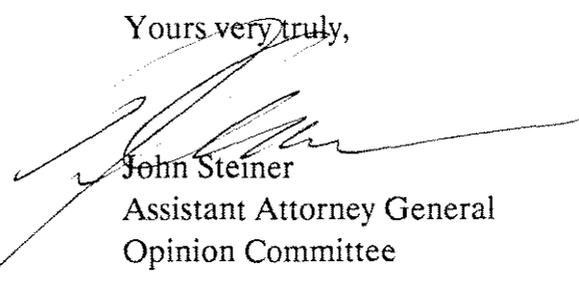
In Industrial Foundation, *supra*, the court found that information is excepted from public disclosure if (1) it contains highly intimate or embarrassing information

about a person's private affairs, the release of which would be highly objectionable to a person of ordinary sensibilities, *and* (2) it is of no legitimate concern to the public. *Id.* at 683-85.

The public has a legitimate interest in the job qualifications and performance of public employees. Open Records Decisions Nos. 579 (1990); 470 (1987); 441 (1986); 350 (1982); *see also*, Klein Indep. School Dist. v. Mattox, 830 F.2d 576 (5th Cir. 1987), *cert denied*, 485 U.S. 1008 (1988). Accordingly, the requested information is not excepted from public disclosure by common-law privacy as that doctrine is incorporated into the Open Records Act by sections 3(a)(1) or 3(a)(2). Nor does any privacy interest in the requested information rise to a constitutional level. Klein I.S.D., *supra*, at 580-81. Accordingly, you must release the requested information.

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 OR91-185.

Yours very truly,



John Steiner
Assistant Attorney General
Opinion Committee

JS/lb

Ref.: ID# 11708

cc: Roger Enlow
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