



DAN MORALES
ATTORNEY GENERAL

Office of the Attorney General
State of Texas

July 22, 1991

Ms. Chris G. Elizalde
Walsh, Judge, Anderson, Underwood & Schulze, P.C.
P. O. Box 2156
Austin, Texas 78768

OR91-334

Dear Ms. Elizalde:

On behalf of the Hays Consolidated Independent School District (Hays CISD), 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# 11623.

The custodian of records for the Hays CISD received a written request from a representative of three Hays CISD cafeteria employees for "any and all documents including any and all tape recorded conversations taken at the time" of an investigation of alleged misconduct by the three employees. You advise that tape recordings of any conversations conducted during the investigation have either been shared with the employees or made available for copying by the employees. You contend, however, that two written statements submitted by other employees and the handwritten notes of a supervisor on one of the statements are excepted from required public disclosure by either section 3(a)(1) or 3(a)(11) of the Open Records Act.

Section 3(a)(1) excepts from required public disclosure "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." This exception incorporates judicial decisions applying the informer's privilege. Open Records Decision Nos. 582 (1990); 191 (1978). Section 3(a)(11) of the Open Records Act excepts "inter-agency or intra-agency memorandums or letters which would not be available by law to a party in litigation with the agency." This provision generally protects advice, opinion, or recommendation on policy matters. See Open Records Decision Nos. 582; 574; 565 (1990).

One of the documents is a handwritten statement of an employee describing the conduct of other employees. The statement alleges activity which you

characterize as violating federal and state laws and school district rules and policies, yet you failed to identify the specific laws or rules violated. This omission notwithstanding, we believe the statement on its face alleges conduct which is criminal -- e.g., theft. Moreover, we believe that under the circumstances release of the statement may tend to reveal the informant's identity. Accordingly, the statement may be withheld in its entirety.

The handwritten note attached to the first statement may be withheld pursuant to section 3(a)(11), as it reflects the opinion of an employee. See Open Records Decision No. 450 (1986).

The second document is a summary of a telephone conversation by the employee who received the call. It does not on its face allege unlawful conduct by any person and therefore may not be withheld under the informer's privilege. See Open Records Decision Nos. 582 (1990); 515 (1988). The statement, furthermore, reflects the employee's recollection of the conversation, and as such represents factual matter that cannot be withheld under section 3(a)(11). Open Records Decision Nos. 582 (1990); 419 (1984). The same is true of the note attached to the statement. Both items must be released.

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 OR91-334.

Yours very truly,



Steve Aragon
Assistant Attorney General
Opinion Committee

SA/mc

Ref.: ID#s 11623; 11971; 11990

cc: Texas Association of Public School Employees
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ATTN: Delicia Allen, TAPSE State Assistant