



DAN MORALES
ATTORNEY GENERAL

Office of the Attorney General
State of Texas

July 29, 1991

Ms. Jane Hickie
Director
Office of State-Federal Relations
600 Maryland Avenue, S.W., Suite 255
Washington, D.C. 20024

OR91-347

Dear Ms. Hickie:

By letter of January 8, 1991, Cynthia Thigpen, the accountant of the Office of State-Federal Relations asked whether certain information was subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. This request was assigned ID# 11420.

The request, made by Ms. Linda L. Riley of Washington D.C., was not couched in the form of an open records request. However, your agency treated it as a request under the Texas Open Records Act and submitted it to this office for a determination. Ms. Riley requested the following information regarding the agency and each of its employees:

1. The agency's District of Columbia Registration Number,
2. Employer Personnel File for each Employee,
3. Each Employee's Withholding Certificate (form D-4),
4. Copies of W-2 forms for each employee,
5. Copies of W-4 forms for each employee, and
6. The agency's Certificate of Exemption from D.C. Sales and Use tax.

As a threshold question, it was asked whether the Office of State-Federal Relations must comply with a request under the Open Records Act, made by a non-resident of Texas. The Open Records Act states as follows:

Neither the officer for public records nor his agent shall make any inquiry of any person who applies for inspection or copying of public records beyond the purpose of establishing proper identification and the public records being requested

V.T.C.S. art. 6252-17a, § 5(b). Thus, your office may not even inquire whether the person requesting the records is a resident of Texas. *C.f. Kneeland v. NCAA*, 650 F. Supp. 1047 (W.D. Tex. 1986), *rev'd on other grounds*, 850 F.2d 224 (5th Cir. 1988) (extra-territorial application of Open Records Act).

The letter from Ms. Thigpen stated that she considered the information to fall within the exceptions stated in sections 3(a)(1), (2), (3), and (7) of the Open Records Act. These provisions except the following information from public disclosure:

- (1) information deemed confidential by law, either Constitutional, statutory, or by judicial decision;
- (2) information in personnel files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy,
- (3) information relating to litigation of a criminal or civil nature and settlement negotiations, to which the state or political subdivision is, or may be, a party

....

- (7) matters in which the duty of the Attorney General of Texas or an attorney of a political subdivision, to his client, pursuant to the Rules and Canons of Ethics of the State Bar of Texas are prohibited from disclosure, or which by order of a court are prohibited from disclosure.

V.T.C.S. art. 6252-17a, § 3 (a).

When a governmental body requests an open records decision, it must state which exceptions apply to the information and why. Attorney General Opinion JM-672 (1987) at 2, Open Records Decision No. 252 (1980). If a governmental body does not provide this explanation, the exceptions it cites are considered waived, other than section 3(a)(1). *See* Open Records Decisions Nos. 363 (1983); 216 (1978), *see also* Attorney General Opinion H-436 (1974). It is also required to

submit copies of the information in question, or representative samples if the records are voluminous, and a copy of the letter you received requesting access to your records.

On the basis of the information in your letter, we can advise you that federal tax information concerning state employees is excepted from public disclosure by section 3(a)(1), as information deemed confidential by federal law. *See* Attorney General Opinion H-1274 (1978); Open Records Decision No. 226 (1979). Accordingly, items 3, 4, and 5 of the information requested by Ms. Riley are excepted from disclosure by section 3(a)(1) of the Open Records Act.

We are unable to determine whether items 1, 2, and 6 are excepted from disclosure without additional information. If you view Ms. Riley's request as a request under the Texas Open Records Act and wish to withhold these items of information, it will be necessary for you to provide this information within 20 days of receiving this letter.

First, please let us know what the agency's District of Columbia Registration Number is, and why you believe it is excepted from disclosure by section 3(a)(1) - (3) or 3(a)(7) of the Open Records Act. In addition, send us a copy of the agency's certificate of exemption for D.C. Sales and Use Tax and copies of the employee personnel files, or representative samples, along with a statement of reasons why the exceptions you have cited apply to this information. In addition, you must mark the documents to show which exceptions apply to each specific document.

When you submit the copies or if you have questions about this letter, please refer to OR91-347.

Yours very truly,



Susan Garrison
Assistant Attorney General
Opinion Committee

SG/lb

Ref.: ID# 11420

Enclosures: Attorney General Opinions H-436, H-1274, JM-672;
Open Records Decision Nos. 216, 226, 252, 363

cc: David Talbot
General Counsel
Governor's Office
Capitol Building
Austin, TX 78701