



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 7, 1992

Mr. Robert L. Galligan
Jones, Galligan & Key
P. O. Drawer 1247
Weslaco, Texas 78596-1247

OR92-377

Dear Mr. Galligan:

On behalf of your client the Weslaco Independent School District (the "district") you ask whether teacher appraisal records are subject to required public disclosure under the Texas Open Records Act, V.C.T.S. article 6252-17a. Your request was assigned ID# 16044.

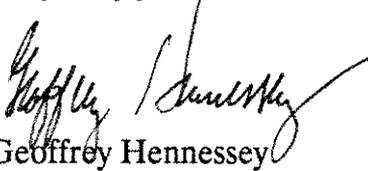
A district teacher has requested the names of all district teachers who have applied for "Career Ladder III on Option II (Fast Track)" promotion within the past four years and has requested to examine all of these teachers' appraisals. The teacher appraisal records are prepared by a teacher's supervisor and are used by the district for contract renewal evaluation, staff development, and career placement. The district contends that these records are excepted from required public disclosure under sections 3(a)(1), 3(a)(2), and 3(a)(11) of the Open Records Act.

Section 3(a)(11) excepts from required public disclosure "inter-agency or intra-agency memorandums or letters which would not be available by law to a party in litigation with the agency." The test under section 3(a)(11) is whether inter-agency or intra-agency information consists of advice, opinion, or recommendation that is used in the deliberative process. Open Records Decision No. 574 (1990). In Open Records Decision No. 538 (1990) this office ruled that similar teacher appraisals, which by their very nature consisted of advice, opinion, and recommendation, were excepted from public disclosure under section 3(a)(11). See also Open Records Decisions Nos. 482 at 6-7 (1987); 466 (1987); 284 (1981); 174 (1977). Accordingly, the teacher appraisals are excepted pursuant to section 3(a)(11) and need not be disclosed to the public. Section 3(a)(11) does not apply to factual information. Open Records Decision No. 419 (1984). Thus, the names of the promotion applicants are not excepted by 3(a)(11).

You also claim that the identities of the promotion applicants are excepted as private pursuant to Open Records Act sections 3(a)(1) and 3(a)(2). Section 3(a)(1) excepts from required public disclosure "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." Section 3(a)(2) excepts "information in personnel files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." The test for determining whether information is private and excepted under sections 3(a)(1) and 3(a)(2) is the same: information is private and excepted if the information is highly intimate or embarrassing such that a reasonable person would object to its release, and the information is of no legitimate concern to the public. Open Records Decision Nos. 545 (1990); 467 (1987); 464 (1987); 441 (1986). The names of those teachers that have applied for promotion is not intimate or embarrassing, and thus neither section 3(a)(1) nor 3(a)(2) is applicable. *See* Open Records Decision Nos. 421 at 5 (1984) (the fact that individual applied for commission as a deputy not excepted under 3(a)(2)); 188 (1978) (names of persons seeking appointment as municipal judges are not excepted).

We conclude that the names of promotion applicants are not excepted under the Act and therefore should be disclosed; however, the personnel appraisal records for these teachers are excepted under 3(a)(11). 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 OR92-377.

Very truly yours,


Geoffrey Hennessey
Assistant Attorney General
Opinion Committee

GH/lmm

Ref: ID# 16044
ID# 16347

cc: Mr. Silvestre Moreno, Jr.
Mary Hodge Middle School
Weslaco I. S. D.
Weslaco, Texas