



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

April 29, 1993

Mr. Robert E. Luna  
Law Offices of Earl Luna, P.C.  
4411 Central Building  
4411 N. Central Expressway  
Dallas, Texas 75205

OR93-196

Dear Mr. Luna:

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# 19415.

The Coppel Independent School District (the "school district"), which you represent, has received a request for information relating to a teacher employed by the school district. Specifically, the requestor seeks "[a]ll complaints of any nature against Scott Mason filed with the Coppel Independent School District or any Coppel school during school year 1991-92 and school year 1992-93." You have submitted to us for review several letters written to the school district in which parents and a bus driver complain about Mr. Mason's conduct.<sup>1</sup> You claim that these letters are excepted from required public disclosure by sections 3(a)(1) and 3(a)(2) of the Open Records Act.

Section 3(a)(1) excepts "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." Section 3(a)(1) excepts information from required public disclosure if its release would cause an invasion of privacy under the test articulated by the Texas Supreme Court in *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information may be withheld on common-law privacy grounds only if it is highly intimate or embarrassing and is of no legitimate concern to the public. Section 3(a)(2) protects personnel file information only if its release would cause an invasion of privacy under the test articulated for section 3(a)(1) of the act by the Texas Supreme Court in

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<sup>1</sup>You contend that "the request for 'complaints' does not encompass" the documents submitted. It is the school district's duty to make a *good faith* effort to determine what documents in its custody are responsive to the request. Open Records Decision No. 561 (1990) at 8. This office does not normally make determinations regarding the responsiveness of documents to a request, and therefore assumes that these documents are responsive. It is puzzling that the school district would submit these documents for review if it believes in good faith that they are not responsive to the request.

*Industrial Foundation. Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.—Austin 1983, writ ref'd n.r.e.); *see also* Open Records Decision No. 441 (1986).<sup>2</sup> In Open Records Decision No. 470 (1987), this office determined that a public employee's job performance does not generally constitute his private affairs and is thus not protected by the doctrine of common law privacy. *See also* Open Records Decision No. 542 (1990) at 5 (information about qualifications of a public employee is of legitimate concern to the public).

We have examined the documents submitted to us for review. Generally, they contain complaints about the teacher's conduct in the classroom and behavior toward students. This information is neither intimate nor embarrassing and is of legitimate concern to the public. Some of the information, however, relates to private matters concerning the parents and their children and is of no legitimate concern to the public. This information has been marked and must be withheld from required public disclosure under section 3(a)(1) of the Open Records Act. The remaining information may not be withheld under the doctrine of common law privacy as incorporated into sections 3(a)(1) and 3(a)(2) of the Open Records Act.<sup>3</sup>

We note, however, that some of the information submitted to us for review is made confidential by federal statute. Section 14(e) incorporates the requirements of the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g, into the Open Records Act. V.T.C.S. art. 6252-17a, § 14(e); *see also id.*, § 3(a)(14); Open Records Decision No. 431 (1985). FERPA provides the following:

No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of permitting the release of education records (or personally identifiable information contained therein other than directory information, as defined in paragraph (5) of subsection (a)...) of students without the written consent of their parents to any individual, agency, or organization.

20 U.S.C. § 1232g(b)(1). "Education records" are records which:

- (i) contain information directly related to a student; and

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<sup>2</sup>Section 3(a)(2) also expressly protects "transcripts from institutions of higher education maintained in the personnel files of professional public school employees." V.T.C.S. art. 6252-17a, § 3(a)(2).

<sup>3</sup>You contend that the information should be withheld under section 3(a)(1) because it places an individual in a "false light." The Open Records Act, however, does not protect information under the "false light" privacy doctrine. Open Records Decision No. 579 (1990) (copy enclosed).

(ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.

*Id.* § 1232g(a)(4)(A). FERPA may not be used to withhold entire documents; the school district must delete information only to the extent "reasonable and necessary to avoid personally identifying a particular student" or one or both of his parents. Open Records Decision Nos. 332 (1982); 206 (1978). Thus, only information identifying or tending to identify students or their parents must be withheld from required public disclosure. Some of the information submitted to us for review identifies or tends to identify students or their parents. This information has been marked and must be withheld from required public disclosure under section 14(e) of the Open Records Act in conjunction with FERPA.

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 OR93-196.

Yours very truly,



Mary R. Crouter  
Assistant Attorney General  
Opinion Committee

MRC/GCK/lmm

Enclosure: Open Records Decision No. 579  
Marked Documents

Ref.: ID# 19415

cc: Ms. Wendy A. Wegren  
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