



Office of the Attorney General
State of Texas

July 14, 1993

DAN MORALES
ATTORNEY GENERAL

Mr. James T. McNutt, Jr.
Scott, Hulse, Marshall, Feuille, Finger
& Thurmond, P.C.
Texas Commerce Bank Building, 11th Floor
El Paso, Texas 79901

OR93-454

Dear Mr. McNutt:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, V.T.C.S. article 6252-17a. Your request was assigned ID# 20234.

Region XIX of the Education Service Center (the "region"), which you represent, has received a request for information relating to an applicant for the position of executive director. Specifically, the requestor seeks six categories of information:

1. Maria Casillas' application portfolio for the position of Executive Director, including, but not limited to, her letter of application, the application form itself, her letters of reference, her resume, and any other accompanying materials that she submitted in her application.
2. A copy of the Board's minutes for the meeting conducted on Monday, April 5, including a list of those in attendance.
3. A copy of the Board's minutes for the meeting conducted on Thursday, April 8, including a list of those in attendance.
4. A copy of the state laws and rules governing the selection of the Executive Director.
5. A copy of any Region XIX ESC policies governing the selection of the Executive Director.
6. Copies of any correspondence to Commissioner of Education Lionel Meno and/or from Julian Shaddix to you or to members of the Region XIX board of trustees regarding the selection of the Executive Director from the date of John Uxer's announcement of retirement until April 9, 1993.

You advise us that you have made some of the requested information available to the requestor. You also advise us that the region does not possess information responsive to items 4 and 6 above. The Open Records Act does not require a governmental body to make available nonexistent information, Open Records Decision No. 362 (1983) at 2, or to obtain documents that it does not possess, Open Records Decision No. 558 (1990) at 2. You object, however, to release of the remaining information, which you have submitted to us for review, and claim that sections 3(a)(1), 3(a)(2), and 3(a)(11) of the Open Records Act except it from required public disclosure.

You claim that section 3(a)(1), in conjunction with common-law privacy doctrine, and section 3(a)(2) except portions of Ms. Casillas's application for employment, including her educational transcripts. Section 3(a)(1) excepts "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."¹ The court in *Hubert v. Harte-Hanks Texas Newspapers, Inc.*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.), found that section 3(a)(2) protects personnel file information only if its release would cause an invasion of privacy under the test that the Texas Supreme Court articulated for section 3(a)(1) of the act in *Industrial Foundation of the South v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Under *Industrial Foundation*, a governmental body may withhold information on common-law privacy grounds only if the information is highly intimate or embarrassing and is of no legitimate concern to the public. Actions associated with a person's public employment generally do not constitute the person's private affairs. See Open Records Decision No. 470 (1987) at 4. The public has a legitimate interest in the job qualifications, including college transcripts, of public employees. See *id.*; see also Open Records Decision No. 455 (1987) at 8-9. In Open Records Decision No. 455 this office held that common-law privacy does not protect an applicant's educational training; names and addresses of former employees; dates of employment; kind of work, salary, and reasons for leaving; names, occupations, addresses and phone numbers of character references; job performances or abilities; and names of friends or relatives the governmental body employs.

The information that you have submitted to us for review relates to an employee selection process and contains information relating to the qualifications of an applicant who was selected for employment. We conclude that the documents submitted to us for review contain no information that is "intimate or embarrassing." Moreover, the information is of legitimate interest to the public. Thus, the information does not meet

¹Section 3(a)(2) also excepts "transcripts from institutions of higher education maintained in the personnel files of professional public school employees." We note, however, that Ms. Casillas is not a "professional public school employee[]," but rather an employee of a subdivision of the Texas Education Agency. See Educ. Code § 11.32. Accordingly, we conclude that her transcripts do not fall within the protection of section 3(a)(2).

the test for common-law privacy under *Industrial Foundation*, and you may not withhold it from required public disclosure under sections 3(a)(1) and 3(a)(2) of the Open Records Act.

You also claim that some of the requested information constitutes "inter-agency or intra-agency memorandums or letters which would not be available by law to a party in litigation with the agency" under section 3(a)(11) of the act and, therefore, is excepted from public disclosure. In *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ), the Third Court of Appeals recently held that section 3(a)(11) "exempts those documents, and only those documents, normally privileged in the civil discovery context." *Gilbreath*, 842 S.W.2d at 413. In Open Records Decision No. 615 (1993) (copy enclosed) this office reexamined the section 3(a)(11) exception in light of the *Gilbreath* decision, holding that section 3(a)(11) excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the deliberative or policymaking processes of the governmental body at issue. An agency's policymaking functions, however, do not encompass personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. *Id.* at 5-6. As the information submitted to us for review relates to a personnel matter, we conclude that section 3(a)(11) does not except it from required public disclosure. Accordingly, the region must release in its entirety the information submitted to us for review.

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 public open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Kimberly K. Oltrogge
Assistant Attorney General
Opinion Committee

KKO/GCK/jmn

Enclosures: Open Records Decision No. 615

Ref.: ID# 20234

cc: Ms. Bonnie Leslie, Ed. D.
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