



**THE ATTORNEY GENERAL
OF TEXAS**

April 10, 1989

**JIM MATTOX
ATTORNEY GENERAL**

Mr. Ben Niedecken, Jr.
School Attorney
Dallas Independent School District
3700 Ross Avenue
Dallas, Texas 75204-5491

LO-89-35

Dear Mr. Niedecken:

You inquire about the procedures applicable to requests for information under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your questions do not involve a request for specific records under the Open Records Act; thus we cannot issue a determination under that statute. Open Records Decision No. 417 (1984). Nor are school districts authorized by section 402.042 of the Government Code to request Attorney General Opinions. However, we can direct your attention to prior decisions of our office which are relevant to your questions.

You state that the Dallas Independent School District contracts for a "voice mail box" service for its employees and Board of Education members. It operates by allowing employees to send telephone messages to board members' voice mail boxes either individually or by making one call which can be sent to all nine board members' voice mail boxes. These messages are recorded and maintained until the board member receives the message by dialing an individual code. He may then erase the message.

The district has allowed media representatives that pay the cost of a voice mail box to receive messages sent by employees to board members. You inform us that media representatives often receive a message and make it public before board members have received it. The board would like to delay the delivery of voice mail messages to the media by twenty-four hours to allow board members an opportunity to receive them and to allow the district's legal staff to review the messages for information confidential by law or excepted from public disclosure by the exceptions in the Open Records Act. In connection with this proposal, you ask the following questions:

(1) Do telephone messages from employees to board members placed in computerized voice mail boxes have to be shared with members of the media without a written request for specific information?

(2) If the messages must be shared with the media, may the district exclude information that is confidential by law or exempt from disclosure under Section 3(a) of Article 6252-17a [V.T.C.S.] without disclosing same to the media?

(3) Must the district share the information immediately with the news media or may the district delay the disclosure of the messages for twenty-four hours to allow review by district staff to determine if the messages contain information that is confidential by law or exempt from disclosure under Section 3(a) and to allow the board time to receive the messages before [they are] released to the public?

The Open Records Act defines "public records" as "the portion of all documents, writings, letters, memoranda, or other written, printed, typed, copied, or developed materials which contains public information." Tape recordings and computer tapes are subject to the Open Records Act. Open Records Decision Nos. 352 (1982); 32 (1974).

In Open Records Decision No. 304 (1982), this office determined that the Open Records Act did not require any governmental body to produce information in the absence of a written request. See V.T.C.S. art. 6252-17a, § 7(a). Moreover, a request under the Open Records Act applies only to information in existence when the request is received by the governmental body. Open Records Decision No. 452 (1986); see also Attorney General Opinion JM-48 (1983); Open Records Decision Nos. 465 (1987); 362 (1983); 342 (1982); 145 (1976); 87 (1975). A governmental body is therefore not required to comply with a standing request to provide information as it comes into existence in the future. Open Records Decision No. 465 (1987).

Section 3(a)(1) of the Open Records Act protects from public disclosure information deemed confidential by the constitution, case law, or statutes, that is, by sources of law other than the Open Records Act itself. Educational

institutions must also comply with the confidentiality provisions of the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g. See, e.g., Open Records Decisions No. 431 (1985); 72 (1975). The exceptions to public disclosure in section 3 other than section 3(a)(1) are waived by the governmental body if it fails to raise them when it requests an Open Records Decision from this office. See, e.g., Open Records Decision No. 325 (1982).

The governmental body that receives a request for documents initially decides whether any of the requested information is confidential or permitted to be withheld, subject to the Attorney General's review. See generally Attorney General Opinion H-90 (1973) at 7-8. A governmental body may take a reasonable amount of time to comply with a request for public information. Open Records Decision No. 467 (1987) at 6. What constitutes a reasonable time depends upon the facts of each case; the volume of material requested is highly relevant to that determination. Id. See Open Records Decision No. 96 (1975) ("directory" information about students is deemed in "active use" under article 6252-17a, section 4, V.T.C.S, while notice required by Family Educational Rights and Privacy Act is given).

I hope this information is helpful.

Very truly yours,



Susan L. Garrison
Assistant Attorney General
Opinion Committee

APPROVED: Sarah Woelk, Chief
Letter Opinion Section

SLG/er

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