



The Attorney General of Texas

December 21, 1982

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An Equal Opportunity/
Affirmative Action Employer

Honorable Mike Driscoll
Harris County Attorney
1001 Preston, Suite 634
Houston, Texas 77002

Open Records Decision No. 326

Re: Whether unsuccessful
applicant may view application
file

Dear Mr. Driscoll:

You have asked for a decision under the Open Records Act, article 6252-17a, V.T.C.S. In your letter to this office, you state the following facts.

In December 1981 an individual applied to the Harris County Sheriff's Department for employment as a deputy sheriff. Prior to the completion of the application process, she began "visiting in one of the District Courts," during which time she "may have acted as the bailiff for that court, apparently at the direction of the District Court Judge." She later signed an employment contract "in anticipation of working for the Sheriff's Department."

During the application process, the sheriff's department decided that this applicant did not meet its requirements for employment. You state that the sheriff never signed the employment contract, the applicant was never deputized, and she never took the oath of office. You further state that the department never instructed her to work as a bailiff in the district court.

This applicant recently asked the sheriff to pay her for the time she spent in the district court. She also requested access to her pre-employment file and copies of certain documents contained therein. We understand from the copy of her request letter that you sent to this office that the documents in question include her application for employment, the employment contract that she signed, and two psychological examinations and their results. You contend that sections 3(a)(1), 3(a)(3), and 3(a)(8) of the Open Records Act authorize you to deny this request.

Section 3(a)(3) excepts from required public disclosure:

information relating to litigation of a criminal
or civil nature and settlement negotiations, to

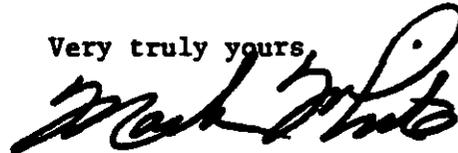
which the state or political subdivision is, or may be, a party, or to which an officer or employee of the state or political subdivision, as a consequence of his office or employment, is or may be a party, that the attorney general or the respective attorneys of the various political subdivisions has determined should be withheld from public inspection.

Section 3(a)(3) is applicable where "litigation is pending or reasonably anticipated in regard to a specific matter as opposed to a remote possibility among a group or classification." Open Records Decision Nos. 311 (1982); 130 (1976). In support of your claim that section 3(a)(3) is applicable in this instance, you have forwarded to us a copy of a complaint that was filed with the Equal Employment Opportunity Commission (EEOC) by the individual whose pre-employment file is at issue here. This complaint finds fault with a number of things that occurred during the application process.

In Open Records Decision No. 266 (1981), we held that a political subdivision may successfully invoke section 3(a)(3) where a complaint against it is pending before the EEOC. See also Open Records Decision No. 270 (1981). The information that you have provided indicates, moreover, that the complaint is sufficiently broad as to enable us to conclude that all of the materials requested by this individual are related to it. And we finally observe that even if it may be said that this individual's pre-employment file constitutes a "personnel file" within the meaning of the Open Records Act, she has no "special right of access" to it. Where section 3(a)(3) is applicable, the governmental entity claiming it may withhold the information even from the subject of the personnel file. Open Records Decision No. 288 (1981).

We therefore conclude that section 3(a)(3) authorizes you to withhold all of the information at issue here.

Very truly yours,



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