



The Attorney General of Texas

December 22, 1982

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An Equal Opportunity/
Affirmative Action Employer

Mr. Tom Todd
City Attorney
City of Arlington
P. O. Box 231
Arlington, Texas 76010

Open Records Decision No. 336

Re: Performance evaluation of
employee; dates of sick leave
taken by named employee

Dear Mr. Todd:

You have requested our decision under the Open Records Act, article 6252-17a, V.T.C.S., regarding the availability of certain information in employee personnel files.

On April 27, 1982, an employee of the city of Arlington filed an age discrimination complaint with the federal Equal Employment Opportunity Commission [hereinafter EEOC]. The complaint alleges, inter alia, that the employee "received an unfavorable performance evaluation" and as a result, "was denied a step increase." The employee seeks to obtain copies of two memoranda, dated February 11 and March 18, 1982, written by his supervisor and addressed to the assistant director of recreation for the city of Arlington. Both memoranda relate to the job performance of the aggrieved employee. You suggest that the two memoranda are excepted from disclosure by sections 3(a)(3) and 3(a)(11) of the Open Records Act.

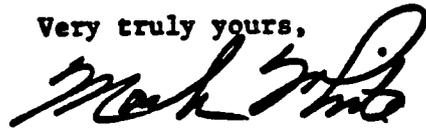
We believe that the entire contents of both memoranda may be withheld under section 3(a)(3), as "information relating to litigation." The employee's age discrimination complaint filed with the EEOC directly relates to the precise information contained in the memoranda. Furthermore, we have previously recognized that a pending complaint before the EEOC indicates a substantial likelihood of potential litigation.

In Open Records Decision No. 281 (1981), we said that, where a discrimination complaint is pending before the EEOC, and requested information is relevant to that complaint, the information may be withheld from disclosure under section 3(a)(3). See also Open Records Decision Nos. 270, 266 (1981). In our opinion, this decision is dispositive of the present inquiry. We hold therefore that the two memoranda at issue here may be withheld from disclosure at this time under section 3(a)(3) of the Open Records Act. In view of this determination, we need not address the applicability of section 3(a)(11).

You also ask whether the names of employees who took sick leave and dates of sick leave taken may be withheld. The requestor has not asked for information about the nature of the illness, and we express no opinion on the availability of this information. You contend that this information is excepted by section 3(a)(2) because its release would constitute a "clearly unwarranted invasion" of the privacy of the city's employees. In Open Records Decision No. 262 (1980), we said that certain information contained in reports filed by a municipally-operated emergency medical service was not excepted from disclosure either by a constitutional or common law right of privacy. The reports contained, inter alia, the patient's name, address, gender and age. Although specific information about certain injuries and illnesses was held to be excepted, the fact of injury or illness was clearly recognized as public information.

We have frequently indicated that the scope of employee privacy under section 3(a)(2) is very narrow. Open Records Decision Nos. 315 (1982); 278 (1981); 260, 257 (1980). In our opinion, disclosure of the identity of a public employee who uses sick leave and the dates of that use cannot be said to constitute a "clearly unwarranted invasion of [the] personal privacy" of the employee. See Open Records Decision Nos. 298, 284 (1981). We conclude that the names of employees taking sick leave and dates of sick leave taken are not excepted from disclosure under section 3(a)(2) of the Open Records Act. See Open Records Decision No. 288 (1981).

Very truly yours,



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