



**THE ATTORNEY GENERAL  
OF TEXAS**

**JIM MATTOX  
ATTORNEY GENERAL**

April 26, 1990

Mr. Jesus Toscano, Jr.  
Assistant City Attorney  
City of Dallas  
City Hall  
Dallas, Texas 75201

OR90-158

Dear Mr. Toscano:

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# 8818.

The Dallas Police Department (DPD) has received a request for the following information concerning its "recruiting, hiring, and training" procedures:

1. Demographics regarding the number of applicants (walk-ins, referrals, recruited) with the totals indicating each applicant's race, sex, age, and the geographical region in which each applicant resided for the past five years;
2. The Applicant Interview Board (AIB) make-ups for the past five years which should also include the race, sex, age, and rank of each AIB board member;
3. The number of AIBs conducted by each command officer by race, sex, age, rank;
4. The number of applicants (race, sex, age) interviewed by each board along with the qualifying and disqualifying number indicated by race, sex, and age;
5. The number of "recycled" applicants or those applicants interviewed more than once along with their qualifying and disqualifying rates indicated by race, sex, and age;

6. The success/failure rates of all applicants that are hired and complete the academy's training course by race, sex, age;
7. The success/failure rates of all recruits in the field training program by race, sex, and age;
8. The number of recruits remediated and intensively remediated during field training by race, sex, and age;
9. The success/failure rates of recruits by race and sex.

The DPD asserts this information is protected from required public disclosure by section 3(a)(3) of the Open Records Act, article 6252-17a, V.T.C.S. Section 3(a)(3), known as the litigation exception, 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.

To claim section 3(a)(3), the governmental body must show: 1) that litigation is actually pending or reasonably anticipated and 2) that the information "relates" to the litigation. See Open Records Decision No. 551 (1990).

To demonstrate that litigation is actually pending, you submitted a copy of the court pleadings in a civil action in which the individual who requested the information is a plaintiff. It is now necessary to review the information in light of these court pleadings to determine whether the information "relates" to the litigation. See Open Records Decision No. 416 (1984).

The plaintiffs in this civil action brought a class action against the City of Dallas, the former chief of police, the current chief of police, the Dallas city manager

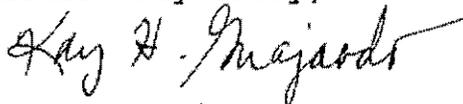
and mayor, and the personnel director of the City of Dallas alleging discriminatory acts committed during the course of the employment of the plaintiffs and the class of black individuals similarly situated. The action was brought pursuant to Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq, and the Civil Rights Acts of 1866 and 1871, 42 U.S.C. §§ 1981, 1982, 1983, 1985, for violations of the First and Fourteenth Amendments of the United States Constitution, and the rights and privileges of citizens of the United States and State of Texas. Specific allegations of discrimination include, for example, inequitable and improper prosecution and enforcement of discipline including suspension, demotion and termination, denial of advancement opportunities, denial of access to training and education opportunities, and other discriminatory treatments of particular black police officers.

You inform us that plaintiffs attempted to include DPD's hiring practices as part of the suit by filing a motion with the court. The city/defendant responded to this motion by arguing that DPD's hiring practices were not an issue in this lawsuit. The court agreed with the city and denied the motion, thereby preventing DPD's hiring practices from being an issue in this law suit.

The information requested, as you state in your letter to this office, concerns DPD's hiring practices. The court in the pending litigation has ruled that the hiring practices of DPD is not an issue in this case. Section 3(a)(3) of the Open Records Act is not applicable where there is no showing of a direct relationship between the information sought and the pending litigation. See Open Records Decision Nos. 551 (1990); 222 (1979). Hence, you must release the requested information.

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 OR90-158.

Yours very truly,



Kay H. Guajardo  
Assistant Attorney General  
Opinion Committee

KHG/le

Mr. Jesus Toscano, Jr. - Page 4 (OR90-158)

Ref.: ID# 8818

Enclosures: Documents Sent

cc: Mr. James Allen, Jr.  
President  
Texas Peace Officers Association  
P.O. Box 762353  
Dallas, Texas 75376-2353