



Office of the Attorney General

State of Texas

August 13, 1992

DAN MORALES

ATTORNEY GENERAL

Mr. Burton F. Raiford  
Commissioner  
Texas Department of Human Services  
P. O. Box 149030  
Austin, Texas 78714-9030

OR92-478

Dear Mr. Raiford:

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# 16786.

You have received a request for information relating to complaints filed with the Texas Commission on Human Rights (the "commission") or the Equal Employment Opportunity Commission ("EEOC") by Texas Department of Human Services (the "department") employees. Specifically, the requestor seeks four categories of information for the period July 6, 1991 to July 6, 1992:

- (a) All correspondence received by you from the Texas Commission on Human Rights and/or the [EEOC] concerning complaints of discrimination;
- (b) . . . [A]ny correspondence or other communication received by the Texas Department of Human Services from counsel for any aggrieved or allegedly aggrieved person.
- (c) . . . [A]ll rules, regulations or guidelines that pertain to the processing of complaints by state employees to the Civil Rights Department of the Texas Department of Human Services;
- (d) . . . [A]ny documents which show the demographics of the Texas Department of Human Service . . .

You claim that information responsive to item (a) is excepted from required public disclosure by statute and by common-law privacy rights pursuant to Open Records Act section 3(a)(1). You also claim that some of the information responsive to item (a) is excepted from required public disclosure by Open Records Act section 3(a)(3). You advise that item (b) is unclear and ask that the ten day limit provided under Open Records Act section 7 be tolled pending clarification of this item. You also claim that this information is excepted from required public disclosure under Open Records Act sections 3(a)(1) and 3(a)(3). You do not comment on items (c) and (d), thus we assume that this information has been or will be made available to the requestor. *See* Open Records Decision No. 363 (1983).

Section 3(a)(1) excepts from required public disclosure "information deemed confidential by law, either Constitutional, statutory or by judicial decision." You claim that section 8.02 of the Texas Commission on Human Rights Act, V.T.C.S. article 5221k, and title 42 United States Code section 2000e-8(e), make the requested information confidential. Section 8.02(a) of article 5221k, V.T.C.S., provides, in part:

An officer or employee of the [commission on Human Rights] may not make public any information obtained by the commission under its authority under Section 6.01 of this Act except as necessary to the conduct of a proceeding under this Act.

This provision directs the *commission* and not the department to withhold certain information obtained under section 6.01. Pre-existing information in a separate state agency's personnel files, however, does not constitute commission information about efforts to resolve a discrimination claim. Attorney General Opinion JM-830 (1987) at 5; *see also* DM-40 (1991). Accordingly, section 8.02, article 5221k, V.T.C.S., does not make information in the personnel files of employees of the Texas Department of Human Services confidential.

Section 2000e-8(3), 42 U.S.C., provides, in part:

It shall be unlawful for any officer or employee of the [EEOC] to make public in any manner whatever any information obtained by the Commission pursuant to its authority under this section prior to the institution of any

proceeding under this subchapter involving such information.  
[Emphasis added.]

This provision does not expressly prohibit the department from releasing the requested information nor does it authorize the EEOC to make information in the possession of a state agency confidential. See JM-830 at 7; DM-40 at 4. Accordingly, the requested information may not be withheld from required public disclosure pursuant to state or federal statute.

You also claim that some of the requested information is excepted from required public disclosure by privacy interests. Information may be withheld from required public disclosure under common-law privacy if it meets the criteria the Texas Supreme Court articulated for section 3(a)(1). See *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), cert. denied, 430 U.S. 931 (1977). Under *Industrial Foundation*, information may be withheld on common-law privacy grounds only if it is highly intimate or embarrassing and is of no legitimate concern to the public. *Id.* The constitutional right of privacy protects information relating to marriage, procreation, contraception, family relationships, and child rearing and education. See Open Records Decision No. 447 (1986) at 4. We have examined the documents submitted for our review and conclude that they do not contain information protected by common law or constitutional privacy. The requested information may not be withheld from required public disclosure under section 3(a)(1).

You also claim that EEOC or commission records relating to pending EEOC or commission proceedings are excepted from required public disclosure by section 3(a)(3), which excepts

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) applies only when litigation in a specific matter is pending or reasonably anticipated and only to information clearly relevant to that litigation.

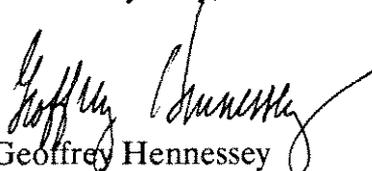
Open Records Decision No. 551 (1990). The pendency of a complaint before the EEOC indicates a substantial likelihood of litigation and is therefore sufficient to satisfy section 3(a)(3). Open Records Decision No. 368 (1983). Once information has been obtained by parties to the litigation, *e.g.* through discovery or by court order, no section 3(a)(3) interest exists with respect to that information. Open Records Decision Nos. 349, 320 (1982).

You have submitted for our review samples of information responsive to item (a), including, *inter alia*, determinations of the EEOC, correspondence from the commission to complainants, findings of the commission, commission status reports, EEOC "Notice of Charge of Discrimination," and other documents which appear, in every case, to have been made available to either of the parties to the EEOC or commission proceeding. The documents submitted for our review may not be withheld from required public disclosure under section 3(a)(3), because they have already been released to parties to the anticipated litigation. *See* Open Records Decision No. 349, *supra*. Item (a) must be released to the requestor in its entirety.

You advise that item (b) is unclear, and you request that you be given additional time to clarify and respond to that portion of the request. A governmental body is obligated to make a good faith effort to relate a request to information which it holds. Open Records Decision No. 561 (1990) at 8. When a governmental body is presented with an unclear request for information rather than for specific records, it should advise the requestor of the types of information available so that he may narrow his request. *Id.* at 9. Once you have clarified item (b), you must release the requested information within ten days or request a decision from this office.

Because prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling. If you have questions about this ruling, please refer to OR92-478.

Yours very truly,

  
Geoffrey Hennessey  
Assistant Attorney General  
Opinion Committee

GH/GCK/lmm

Enclosures: Attorney General Opinion JM-830; DM-40

Ref: ID# 16786  
ID# 16874

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