



Office of the Attorney General
State of Texas

September 28, 1992

DAN MORALES
ATTORNEY GENERAL

Mr. Quin Tillery
Director
Community Supervision and Corrections Department
P. O. Box 3226
Longview, Texas 75606

OR92-568

Dear Mr. Tillery:

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# 17017.

You have received a request for information relating to two employees of the Community Supervision and Corrections Department of Gregg County (the "department"). Specifically, the requestor seeks

all records you or their employer have relative to their employment including, but not limited to , all personnel records, job performance evaluations, minutes or other written memorandum to or from the Board of Judges concerning Mr. Settegast or Ms. Pratt, recommendations made by you to the Board of Judges concerning wage increases, disciplinary records and written communications to, from, or concerning either Mr. Settegast or Ms. Pratt and related to or touching upon their employment in your department. . . .

We also request, . . . all records concerning other employees in your department whose job performance evaluations were being considered by you at the same time as Mr. Settegast's and Ms. Pratt's prior to your recommendations to the Board of Judges concerning pay increases for those employees, Mr. Settegast or Ms. Pratt. Additionally, all written memorandums, notes,

reports, and recommendations made by you to the Board of Judges in reference to those employees.

You advise us that you have no objection to releasing the personnel files of Mr. Settegast and Ms. Pratt. You claim, however, that the personnel files of all department employees who have received pay raises this year are excepted from required public disclosure by sections 3(a)(2) and 3(a)(3) of the Open Records Act. Because you do not comment on the remainder of the requested information, we presume it has been or will be made public. See Open Records Decision No. 363 (1983).

Previous open records decisions issued by this office resolve your request. Section 3(a)(3) 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). "Whether litigation is reasonably anticipated must be determined on a case-by-case basis." Open Records Decision No. 452 (1986) at 4.

The department has received a letter from the attorney representing Mr. Settegast and Ms. Pratt in connection with alleged discriminatory and retaliatory actions related to their employment with the department. In this letter, the attorney explains that the two employees attempted to resolve their complaints through the department's grievance procedures but now "have no alternative but to seek resolution of their grievances through other means." You have submitted this letter for our review. On the basis of this letter, we conclude that litigation may be reasonably anticipated. Having examined the documents submitted to us for review, we further conclude that the requested information relates to the anticipated litigation and may be withheld from required public disclosure under section 3(a)(3)

of the Open Records Act. Please note that this ruling applies only for the duration of the litigation and to the documents at issue here. As we resolve this matter under section 3(a)(3) of the Open Records Act, we need not address the applicability of section 3(a)(2) at this time.

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 OR92-568.

Yours very truly,



Celeste A. Baker
Assistant Attorney General
Opinion Committee

CAB/GCK/lmm

Ref.: ID# 17017
ID# 17032
ID# 17111
ID# 17220
ID# 17230

cc: Mr. Charles P. Connolly
Merriman, Patterson & Alison
Texas National Bank Building
3400 W. Marshall Ave., Suite 402
Longview, Texas 75604

Mr. Gary L. Bledsoe
Assistant Attorney General
General Litigation Division
Office of the Attorney General
P. O. Box 12548
Austin, Texas 78711-2548