



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 28, 1994

Ms. Sandra C. Joseph
Open Records Counsel/Disclosure Officer
Office of the Comptroller of Public Accounts
LBJ State Office Building
111 East 17th Street
Austin, Texas 78774

OR94-108

Dear Ms. Joseph:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code (former article 6252-17a, V.T.C.S.¹). Your request was assigned ID# 21543.

The Comptroller of Public Accounts received an open records request from a former employee for certain records² that you contend may be withheld from the public pursuant to the Open Records Act, section 552.103(a) of the Government Code. To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 551 (1990).

You inform us that the requestor has filed suit against your office in federal district court regarding the circumstances of her leaving. Further, you have provided this

¹We note that the Seventy-third Legislature repealed V.T.C.S. article 6252-17a. Acts 1993, 73d Leg., ch. 268, § 46. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

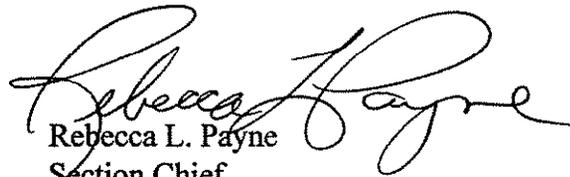
²You inform us that your office does not possess two categories of requested information, *i.e.*, two specifically referenced letters sent to John Sharp and a transcript of the requestor's "testimony" taken during a grievance procedure. The Open Records Act does not generally require a governmental body to provide information not in its possession, nor does it require the agency to create new information in response to an open records request. *See* Open Records Decision No. 445 (1986).

office with a copy of the complaint that the requestor filed under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-5. In this instance you have made the requisite showing that the requested information relates to pending litigation for purposes of section 552.103(a).

This does not, however, end our discussion of the applicability of section 552.103(a). We note that to the extent the requestor has previously seen or had access to the records at issue, there would be no justification for now withholding those records from the requestor pursuant to section 552.103(a). See Open Records Decision Nos. 349, 320 (1982). Consequently, you must release to the requestor copies of all the requested correspondence that she has written to the comptroller's office. You may withhold the remaining requested records pursuant to section 552.103(a) at this time. Please note that the applicability of section 552.103(a) ends once the requested information has been obtained by all parties to the litigation, *e.g.*, through discovery or otherwise, or once the litigation has been concluded. Open Records Decision Nos. 350, 349, 320 (1982).

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 contact our office.

Yours very truly,



Rebecca L. Payne
Section Chief
Open Government Section

RLP/RWP/rho

Ref: ID# 21543
ID# 21768
ID# 21626
ID# 22655
ID# 23803
ID# 24788

Enclosures: Submitted documents

cc: Ms. Barbara Edwina Terrell
P.O. Box 92422
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(w/o enclosures)