



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 25, 1995

Mr. Richard D. Monroe
Deputy General Counsel for Operations
Texas Department of Transportation
Dewitt C. Greer State Highway Building
125 E. 11th Street
Austin, Texas 78701-2483

OR95-208

Dear Mr. Monroe:

You have asked whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 31787.

The Texas Department of Transportation (the "department") received the following request for information:

I request under the Open Records Act, copies of the complete applications of each person hired and interviewed for the following position. Please include copies front and back of the original signed Applicant Skills Questionnaire submitted by these persons. Include my own, please.

The requestor, who had applied for a position with the department, filed a complaint with the Equal Employment Opportunity Commission ("EEOC") alleging violation of the Age Discrimination in Employment Act, 29 U.S.C. § 621 *et seq.* You contend that the requested application forms, which include a skills section, may be withheld from disclosure pursuant to section 552.103(a) of the Government Code.

Section 552.103(a) provides an exception for information relating to litigation to which the governmental body is or may be a party. To secure the protection of section 552.103(a), a governmental body must demonstrate that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to that litigation. *Heard*

v. Houston Post Co., 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. You provided this office the EEOC complaint and the applications to review. This office has held that the pendency of a complaint before the EEOC indicates a substantial likelihood of potential litigation. Open Records Decision Nos. 386 (1983); 336 (1982); 266 (1981). Our review of the information at issue indicates it is related to the pending litigation for purposes of section 552.103(a).

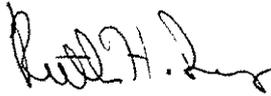
You may withhold from disclosure pursuant to section 552.103(a) the other applicants' application forms. However, you may not withhold from this requestor his own application form. Absent special circumstances, once information has been obtained by all parties to the litigation, no section 552.103(a) interest exists with respect to that information. Open Records Decision No. 349 (1982) at 2. Since the requestor, who is the opposing party to the litigation, has previously had access to his own application form no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982). The applicability of section 552.103(a) also generally ends when the litigation is concluded. Attorney General Opinion MW-575 (1982) at 2; Open Records Decision Nos. 350 (1982) at 3; 349 (1982) at 2. However, you may not release information that is otherwise confidential even when the litigation concludes.

It appears that some of the information in the application forms is made confidential by sections 552.117 and 552.024 of the Government Code. Some of the other applicants' forms contain home addresses and home telephone numbers of current or former departmental employees. Section 552.024 provides that current or former governmental employees who do not want their home addresses and home telephone numbers to be publicly accessible must take that option within fourteen days after starting or ending employment with the state. After fourteen days, an employee wanting to open or close access must so request in writing. If an election is not made, the information is subject to public access. You must withhold the home addresses and home telephone numbers of those former or current employees who, as of the time of the request for the information, had elected to keep the information private. Open Records Decision Nos. 530 (1989) at 5; 482 (1987) at 4; 455 (1987).

The forms also disclose the applicants' social security numbers. This office concluded in Open Records Decision No. 622 (1994) at 3, that amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(vii), make confidential social security numbers obtained or maintained pursuant to any provision of law enacted on or after October 1, 1990. If the applicants' social security numbers were so obtained or maintained, the information is confidential and may not be publicly disclosed. However, you may not withhold from this requestor his own social security number. See Open Records Decision No. 481 (1987) at 4.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Government Section

RHS/rho

Ref: ID# 31787

Enclosures: Submitted documents

cc: Mr. Phil Canady
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