



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 22, 1995

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

OR95-833

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 requests were assigned ID#s 34531 and 34532.

The Texas Department of Transportation (the "department") received a request for information concerning a named employee. The department also received a request for a report and other information related to an internal investigation of an incident involving the same employee.¹ The department contends that the requested information is excepted from disclosure under sections 552.101, 552.103(a) and 552.111.

The information at issue contains social security numbers that you argue are confidential. In Open Records Decision No. 622 (1994), this office determined that social security numbers must be withheld under federal law if obtained or maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990. Thus, prior to releasing any social security number the department should be sure that this information was not obtained or maintained by the department pursuant to any provision of law enacted on or after October 1, 1990.² 42 U.S.C. § 405(c)(2)(C)(viii)(I); Open Records Decision No. 622 (1994) at 4.

¹We note that some of the information at issue concerns the requestor's allegations of sexual harassment, which may be protected from disclosure to the public under section 552.101. *See Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied). However, the information at issue concerns this particular requestor. Thus, the department may not withhold this information on the basis of protecting the requestor's own privacy interests. Gov't Code § 552.023(a).

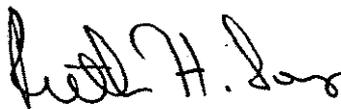
²The Seventy-fourth Legislature has significantly amended the Open Records Act effective September 1, 1995. *See* Act of May 29, 1995, H.B. 1718, sec. 5, § 552.024(a), 74th Leg., R.S.

You also argue that all of the information at issue may be excepted from disclosure pursuant to section 552.103(a). To show the applicability of section 552.103(a), a governmental entity must show 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. However, you have not provided information sufficient to demonstrate that litigation is reasonably anticipated.

You contend that section 552.111 excepts from disclosure the portions of an internal investigative report that reflect the investigator's advice, opinion, and recommendation. In Open Records Decision No. 615 (1993), we determined that in order to be excepted from disclosure, the advice, opinion, and recommendation must be related to policymaking functions of the governmental body rather than to decision-making concerning routine personnel and administrative matters. The information at issue involves an employee disciplinary matter and grievance, which are routine personnel and administrative matters rather than policymaking functions. Thus, the information at issue is not excepted from disclosure under section 552.111.

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 may 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#s 34531, 34532

Enclosures: Submitted documents

(Footnote continued)

(to be codified at Gov't Code Ch. 552). We do not address in this ruling whether recent amendments to the Open Records Act will effect requests for this information that are made on or after September 1, 1995.