



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 27, 1995

Mr. S. Stephen Hilmy  
Gary, Thomasson, Hall & Marks  
P.O. Box 2888  
Corpus Christi, Texas 78403

OR95-1601

Dear Mr. Hilmy:

You ask 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# 27933.

Del Mar College (the "college") asks us to reconsider Open Records Letter No. 94-400, issued by this office on July 25, 1994. In short, you suggest that this office erred in concluding that by failing to ask this office for a ruling within 10 days of the requestor's April 14, 1994 request for information, the college waived the right to claim exceptions to disclosure under sections 552.103 and 552.111 with respect to information responsive to the requestor's subsequent April 18, 1994 request.<sup>1</sup> The relevant facts are as follows. The college received a letter from the requestor dated April 14, 1994, seeking:

certified copies of the office meeting logs from [the president's] office and the office of [the EEO officer] that would document any and all discussions of [the requestor] and/or [the requestor's] EEOC complaint with any employee of Del Mar College.

Subsequently, the college received another letter from the requestor dated April 18, 1994, seeking:

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<sup>1</sup>With the request for reconsideration, you have submitted a third request for information from the requestor. We do not read your letter to seek a ruling from this office with respect to the third request.

copies of the meeting logs, telephone logs, and any "official and/or unofficial" files kept on [the requestor] in [the president's] office or the offices of any other [Del Mar College] Administrators (particularly the Affirmative Action/Equal Employment Opportunity Officer).

The college's request for a ruling regarding the April 14, 1994 request was untimely; its request for a ruling regarding the April 18, 1994 request was made within the 10-day deadline.

The second request for information is broader than the first request. The college's failure to timely seek a request for a ruling with respect to the first request could not have waived the college's right to claim sections 552.103 and 552.111 with respect to information sought in the second request that was not sought in the first request. Therefore, we will review the records that the college has submitted to this office to determine whether any of them are responsive to the second request but not the first. We will then review any such records to determine whether they are excepted under section 552.103 or section 552.111.<sup>2</sup>

Attachment B, transcripts of interviews conducted by the college EEO officer regarding the requestor, and attachment D, which apparently documents a meeting between an employee, the president, and the EEO officer regarding the requestor, appear to be responsive to the first request. With the exception noted below in the footnote, these attachments must be released for the reasons discussed in Open Records Letter No. 94-400.<sup>3</sup> Attachments C, E, and F, however, do not appear to be responsive to the first request, because they do not document meetings involving the president's office or the EEO office at which the requestor or his EEOC complaint were discussed. Therefore, we conclude that Open Records Letter No. 94-400 was incorrect in concluding that the college had waived the right to assert sections 552.103 and 552.111 with respect to these attachments. Thus, we will review attachments C, E, and F to determine whether they are excepted under section 552.103 or section 552.111.

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<sup>2</sup>This office considered whether any of the requested information could be excepted from required public disclosure under section 552.101 in Open Records Letter No. 94-400. You have not asked us to reconsider that aspect of the ruling.

<sup>3</sup>A number of the transcripts reveal the home addresses of the interviewees. Section 552.117(1)(A) makes confidential the home address and telephone number of any employee of a governmental body who has elected to keep such information confidential as provided under section 552.024. If an employee elected to keep this information prior to the date the college received the request, the college must not release the information.

The college contends that attachments C and E are excepted from required public disclosure under section 552.103. That provision excepts from required public disclosure information relating to litigation “to which the state or political subdivision . . . is or may be a party.” Gov’t Code § 552.103(a). Section 552.103 requires concrete evidence that litigation is realistically contemplated; it must be more than mere conjecture. Open Records Decision Nos. 518 (1989) at 5, 328 (1982). Thus, to secure the protection of this exception, 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); *see also* Open Records Decision No. 588 (1991) (contested case under APA is litigation for purposes of predecessor to section 552.103). This office has concluded that the filing of a complaint the federal Equal Employment Opportunity Commission (“EEOC”) demonstrates that litigation may be reasonably anticipated. *See* Open Records Decision Nos. 336 (1982), 281 (1981).

The requestor filed a complaint against the college’s EEO officer with the EEOC, but we have verified with the EEOC that the complaint was withdrawn as of April 26, 1994. Therefore, the EEOC complaint is not relevant to our determination. With respect to your remaining arguments, we do not believe that the statements in the requestor’s April 18, 1994 request letter demonstrate that litigation is reasonably anticipated. *See* Open Records Decision Nos. 452 (1986), 331 (1982) (fact that requestor states intent to sue without more does not demonstrate that litigation may be reasonably anticipated). It is irrelevant under section 552.103 that the EEO officer may file suit against the requestor. Open Records Decision No. 575 (1990) (section 552.103 does not apply to litigation between private parties). Thus, we conclude that the college may not withhold attachments C and E under section 552.103.<sup>4</sup>

Finally, we consider whether attachments C, E, and F are excepted from required public disclosure under section 552.111. Section 552.111 excepts from disclosure “[a]n interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency.” This office has concluded that section 552.111 excepts from public disclosure only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body at issue. Open Records Decision No. 615 (1993) at 5. The policymaking functions of an agency, however, do not encompass routine internal administrative and personnel matters. *Id.* Furthermore, section 552.111 does not except purely factual information from disclosure. *Id.*

Attachment C is a grievance against the requestor filed by another employee of the college with attachments. Although the grievance may not be a routine matter, it does

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<sup>4</sup>Had the college not waived section 552.103 with respect to attachments B and D, the same analysis would apply.

not appear to reflect the policymaking processes of the college. Attachment E is a memorandum from the chairman of the Natural Sciences Department to the dean regarding the complaints of an employee regarding the requestor. It contains mostly factual matters. Furthermore, like attachment C, it relates to an interpersonal conflict between two university employees and does not reflect the policymaking processes of the college. Attachment F, a memorandum from a search committee to the chairman of the department regarding the qualifications of two candidates, deals with a routine administrative and personnel matter and does not reflect the policymaking processes of the college. Therefore, we conclude that attachments C, E, and F may not be excepted from required public disclosure under section 552.111 and must be released.<sup>5</sup>

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,



Loretta R. DeHay  
Assistant Attorney General  
Open Records Division

LRD/MRC/rho

Ref.: ID# 27933

Enclosures: Submitted documents

cc: Mr. Gerald A. Sansing  
P.O. Box 331-334  
Corpus Christi, Texas 78463  
(w/o enclosures)

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<sup>5</sup>Had the college not waived section 552.111 with respect to attachments B and D, the same analysis would apply.