



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 29, 1995

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

OR95-1616

Dear Mr. Ybarra:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. We assigned your request ID# 37282.

The Office of the Attorney General (the "OAG") has received a request for several categories of information regarding the OAG's representation of several state employees in a civil lawsuit and information regarding a specific investigation conducted by the OAG. You have released some of the information to the requestor. You have submitted a representative sample of the remaining requested records for our review and contend that the information is excepted from required public disclosure pursuant to sections 552.101 and 552.103 of the Government Code.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 261.201 of the Family Code provides in pertinent part as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

See Act of May 26, 1995, 74th Leg., R.S., ch. 751, § 93, 1995 Tex. Sess. Law Serv. 3888, 3924 (Vernon). Much of the requested information consists of "reports, records, communications, and working papers" used or developed in investigations made under chapter 261 of the Family Code. Because you have not cited any specific rule that the OAG has adopted with regard to the release of this type of information, we assume that no such regulation exists. Given that assumption, we agree that the records you have marked are confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 (1986) at 2 (predecessor statute).

You have also withheld information obtained from polygraph examinations. We agree that the information you have marked is confidential pursuant to section 19A, article 4413(29cc), V.T.C.S.

You further argue that section 552.103 of the Government Code excepts the requested information from required public disclosure. 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). In this instance you have made the requisite showing that the requested information relates to pending litigation for purposes of section 552.103(a).¹

In reaching this conclusion, however, we assume that the opposing party to the litigation has not previously had access to the records at issue. Absent special circumstances, once all parties to the litigation have obtained particular information, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). We also note that section 552.103(a) no longer applies once the litigation has concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).²

¹Because we conclude that sections 552.101 and 552.103 resolves this request, we need not now consider other exceptions to required public disclosure you have raised.

²In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize

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 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/rho

Ref: ID# 37282

Enclosures: Submitted documents

cc: Ms. Victoria Loe
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(w/o enclosures)

(Footnote continued)

the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.