



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 28 1996

Ms. Nancy Platt
Interim Director
Harris County Community Supervision
Courthouse Annex 21
49 San Jacinto Street
Houston, Texas 77002

OR96-0269

Dear Ms. Platt:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 38378.

The Harris County Community Supervision and Corrections Department (the "department") received an open records request for information relating to a complaint filed by a department employee. The department claims that the information is not subject to the act under section 552.003(b). Alternatively, you contend that if the records are subject to the act, that section 552.103 excepts them from required public disclosure because the employee has filed a claim with the Equal Employment Opportunity Commission ("EEOC"). Finally, you contend that the records are excepted from disclosure under sections 552.101 and 552.102 of the Government Code.

Section 552.003 of the Government Code provides that for purposes of the act, the term governmental body does not include the judiciary. The purposes and limits of the judiciary exception were construed in *Benavides v. Lee*, 665 S.W.2d 151 (Tex. App.--San Antonio 1983, no writ). The court held that the Webb County Juvenile Board was not part of the judiciary for purposes of the act, despite the fact that the board consisted of members of the judiciary and the county judge. In *Benavides v. Lee*, the court explained the purpose of the judiciary exception:

The judiciary exception... is important to safeguard judicial proceedings and maintain the independence of the judicial branch of government, preserving statutory and case law already governing

access to judicial records. But it must not be extended to every governmental entity having any connection with the judiciary.

Id. at 152. Thus, to fall within the judiciary exception, the document must contain information that pertains to judicial proceedings. See Open Records Decision Nos. 527 (1989) (Court Reporters Certification Board not part of judiciary because its records do not pertain to judicial proceedings), 204 (1978) (information held by county judge that does not pertain to proceedings before county court subject to Open Records Act). The records submitted to this office for review relate to complaints filed against a department employee. This information does not pertain to judicial proceedings. Therefore, we conclude that the documents submitted to this office for review are not records of the judiciary and are subject to the Open Records Act.

You next claim that section 552.103 excepts the records from required public disclosure because the employee has filed an EEOC claim against the department. Section 552.103 excepts from required public disclosure information relating to litigation "to which the state or political subdivision . . . is or may be a party." 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). The filing of an EEOC complaint is sufficient to establish that litigation is reasonably anticipated. Open Records Decision No. 638 (1996). You explain that requested records relate to the subject of the EEOC complaint. We have examined the records submitted for our review and agree with your contention. Thus, in this instance, you have made the requisite showing that the requested information relates to anticipated litigation for purposes of section 552.103.

We note, however, that the opposing party to the litigation has already seen two of the documents submitted for our review. 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 Nos. 349 (1982), 320 (1982). If the opposing parties in the litigation have seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a). Finally, the applicability of section 552.103(a) ends once the litigation has concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982). For your convenience, we have marked the document that you may withhold under section 525.103.

Lastly, we address your arguments under sections 552.101 and 552.102 for the records that the opposing party to the anticipated litigation has already seen. 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 552.102 excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Section 552.102 excepts information in personnel files only if it meets the test under section 552.101 for common-law invasion of privacy. *Hubert v. Harte-Hanks Tex. Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.). Information may be withheld under

section 552.101 in conjunction with common-law privacy only if the information is highly intimate or embarrassing *and* it is of no legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

Generally, the public has a legitimate interest in the job performance of public employees. *See* Open Records Decision Nos. 444 (1986), 405 (1983). In addition, the public has a legitimate interest in the job qualifications of public employees, and the reasons for their dismissal, demotion, promotion or resignation. Open Records Decision Nos. 470 (1987), 467 (1987), 444 (1986), 405 (1983).

We have examined the information submitted to us for review. We conclude that it does not contain any information that is intimate or embarrassing. Accordingly, this information may not be withheld from required public disclosure under section 552.102 of the act.

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/ch

Ref.: ID# 38378

Enclosure: Submitted document

cc: Mr. R. A. "Jake" Dyer
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(w/o enclosure)