



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 14, 1996

Mr. Ernest Connor
General Manager-Port Director
Galveston Wharves
P.O. Box 328
Galveston, Texas 77553

OR96-2119

Dear Mr. Connor:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 102069

The Board of Trustees of the Galveston Wharves (the "Wharves") received two requests for various information. You assert that the following requested information is exempted from required public disclosure based on Government Code sections 552.103 and 552.107(1):

Written documentation, complaints, notes, etc. of alleged sexual harassment incidents that prompted the letter addressed to me dated August 21, 1996;

Written documentation as to who received a copy of the letter dated August 21, 1996.

As you raise no exception to its disclosure, we assume the Wharves has or will release the remaining requested information.

Section 552.103(a) of the Government Code exempts from required public disclosure information

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

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. 588 (1991).

You assert that the requested information relates to reasonably anticipated litigation. You contend that litigation is reasonably anticipated because "Mr. O'Rourke has repeatedly stated to Wharves' personnel and board members that he is going to file suit against the Wharves for defamation."

Section 552.103 requires concrete evidence that the claim that litigation may ensue is more than mere conjecture. Open Records Decision No. 518 (1989). A mere threat to sue is not sufficient to establish that litigation is reasonably anticipated. See Open Records Decision No. 331 (1982). There must be some objective indication that the potential party intends to follow through with the threat. See Open Records Decision No. 452 (1986) at 5.

We conclude that the Wharves has not established that litigation is reasonably anticipated in this instance. Accordingly, the Wharves may not withhold the requested information based on section 552.103.

Section 552.107(1) of the Government Code reads as follows:

Information is excepted from [required public disclosure] if

(1) it is information that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Texas Rules of Civil Evidence, the Texas Rules of Criminal Evidence, or the Texas Disciplinary Rules of Professional Conduct.

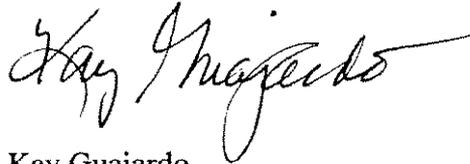
Under this exception, a governmental body generally may withhold only information revealing client confidences or containing legal advice or opinion. See Open Records Decision No. 574 (1990). We agree that section 552.107(1) excepts from required public disclosure the memorandum dated August 23, 1996, from Ms. Sherri Malpass.

Although this office ordinarily does not raise an exception a governmental body has failed to claim, we will raise Government Code section 552.101 on behalf of a governmental body. See Open Records Decision No. 455 (1987). This is so because section 552.101 excepts from public disclosure information deemed confidential by law. The Open Records prohibits the release of confidential information and the improper release of confidential information constitutes a misdemeanor. See Gov't Code § 552.352.

Section 552.101 excepts from required public disclosure information considered to be confidential by law, including information made confidential by judicial decision. This exception applies to information made confidential by the common-law right to privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information may be withheld under section 552.101 in conjunction with the common-law right to privacy if the information contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and if the information is of no legitimate concern to the public. *See id.* We conclude that portions of the requested information are excepted from public disclosure based on section 552.101 in conjunction with the common-law right to privacy and have marked the documents accordingly. *See Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied) (protecting statements of sexual harassment victims).

We are resolving this matter with this 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 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Guajardo
Assistant Attorney General
Open Records Division

KHG/rho

Ref.: ID# 102069

Enclosures: Marked documents

cc: Mr. E.L. "Ted" O'Roarke
1128 Post Office
Galveston, Texas 77550
(w/o enclosures)