



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 12, 1996

Ms. Tamara Armstrong  
Assistant County Attorney  
Travis County  
P.O. Box 1748  
Austin, Texas 78767

OR96-2385

Dear Ms. Armstrong:

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# 102672.

The Travis County Sheriff's Office (the "county") received a request for information that you assert is excepted from required public disclosure based on section 552.103 of the Government Code. Section 552.103(a) of the Government Code reads as follows:

(A) Information is excepted from [required public disclosure] if it is 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). A governmental body has the burden of providing relevant facts and documents to show the applicability of an exception

in a particular situation. The test for establishing that section 552.103 applies is a two-prong showing 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 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.).

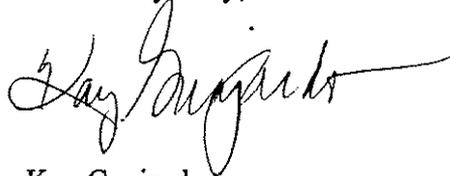
You inform us of the existence of a pending lawsuit brought against the county by a county employee. The employee alleges that, among other things, the county's failure to promote him was for the purpose of retaliating against him because of his association with a labor organization. The requested information is the personnel file of the son of the employee who brought the lawsuit. You contend that the requested information relates to this lawsuit because you believe the employee will allege that the county's decision not to rehire the employee's son is another form of retaliation against the employee. You state that although such an allegation is not in the original petition, the petition may be amended so as to include such an allegation.

At this point, your contention that the employee will amend his petition to include the county's failure to rehire his son as another form of retaliation is mere conjecture. Section 552.103 requires more than mere conjecture. *See* Open Records Decision No. 518 (1989). Consequently, we conclude that section 552.103 does not apply to the requested information.

We note, however, that the requested information contains information that the county must withhold from the requestor pursuant to section 552.101 of the Government Code. *See* Gov't Code §§ 411.083(b)(1), .089(a), .089(b)(1); Open Records Decision No. 565 (1990). We have marked the documents that the county must withhold from disclosure based on section 552.101.

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

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Enclosures: Marked documents

cc: Mr. Benjamin L. Cureton  
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Bastrop, Texas 78602  
(w/o enclosures)