



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

July 23, 1997

Mr. Scott A. Durfee  
General Counsel  
Office of the District Attorney  
Harris County  
201 Fannin, Suite 200  
Houston, Texas 77002-1901

OR97-1678

Dear Mr. Durfee:

You ask whether certain information is subject to required public disclosure under the Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 107690.

The Harris County District Attorney's Office (the "district attorney") received several requests for information pertaining to Assistant District Attorney Marie Munier. You ask that this office determine whether the district attorney is a "governmental body" subject to the act. You assert that the requested information is excepted from required public disclosure based on sections 552.024, 552.101, 552.102, 552.103 and 552.111 of the Government Code.

The Texas Supreme Court has determined that the district attorney is a "governmental body." *Holmes v. Morales*, 924 S.W.2d 920 (Tex. 1996). Consequently, the district attorney is subject to the act.

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 maintain that the requested information relates to litigation the district attorney reasonably anticipated because you believe it will be used to prepare an application for writ of habeas corpus for Kenneth Perkins. We conclude that under the circumstances, the district attorney has not established that the requested information relates to reasonably anticipated litigation.

Section 552.111 of the Government Code excepts from required public disclosure:

An interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency.

This exception applies to a governmental body's internal communications consisting of advice, recommendations, or opinions reflecting the policymaking process of the governmental body at issue. *See* Open Records Decision No. 615 (1993). This exception does not except from disclosure purely factual information that is severable from the opinion portions of the communication. *See id.* Moreover, a governmental body's policymaking process does not include routine administrative or personnel matters. *See id.* We conclude that the district attorney has not established the applicability of section 552.11 to the requested information.

Section 552.117 excepts from public disclosure, among other things, the home address, home telephone number, social security number and family member information of a current or former governmental body official or employee who, at the time the governmental body received the request, had complied with section 552.024 of the Government Code. Thus, if at the time the district attorney received the request Ms. Munier had complied with section 552.024, you must withhold from disclosure the information covered by section 552.117.

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.

*Indus. Found. of the S. 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.*

You urge that "given the nature of [Ms. Munier's] employment, [the release of her personnel file would] expose her to dangerous and retributive invasions of personal privacy." The existence of special circumstances, such as an imminent threat of physical danger as opposed to a generalized and speculative fear of harassment or retribution, may make public disclosure of information an unwarranted invasion of personal privacy. *See Open Records Decision No. 169 (1977)*. We do not believe that you have shown the existence of such special circumstances. The district attorney may not withhold any of the file based on the possibility of retribution.

However, the file does contain confidential financial information. *See Open Records Decision No. 600 (1992)*. We have marked the financial information that is protected from disclosure under the doctrine of common-law privacy as incorporated in Government Code section 552.101. Finally, we have marked one small portion of information that may be released only in accordance with the Medical Practice Act. V.T.C.S. art. 4495b. § 5.08; *see Open Records Decision No. 598 (1991)*.

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# 107690

Enclosures: Marked documents

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