



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 10, 1998

Mr. Kevin McCalla
Director
Legal Division
Texas Natural Resource
Conservation Commission
P.O. Box 13087
Austin, Texas 78711-3087

OR98-2173

Dear Mr. McCalla:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 117927.

The Texas Natural Resource Conservation Commission (the "commission") received a request for the security logs for commission buildings D and E from January 1997 through the present time. You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

You state that the requestor has filed an appeal of his termination with the commission and that he has hired an attorney to represent him in the appeals process and for future action. Additionally you state that the requestor states he will consider the denial of either of these request to be the basis for an appeal or subsequent legal action. You indicate the employee maintains that the commission had no basis for terminating his employment.

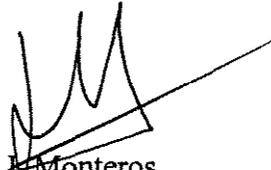
In Open Records Decision No. 452 at 4 (1986), this office stated:

Litigation cannot be regarded as "reasonably anticipated" unless there is more than a "mere chance" of it -- unless, in other words, we have concrete evidence showing that the claim that litigation may ensue is more than mere conjecture. Whether litigation is reasonably anticipated must be determined on a case-by-case basis. [Citations omitted.]

Litigation has been found to be reasonably anticipated when an individual has hired an attorney who demands damages and threatens to sue the governmental entity. Open Records Decision No. 551 at 2 (1990). This office has found that litigation was not reasonably anticipated when an applicant who was rejected for employment hired an attorney, and the attorney as part of his investigation asked for information as to why his client was rejected. Open Records Decision No. 361 (1983). In this situation the prospect of litigation is too speculative for section 552.103(a) to be applicable. Open Records Decision No. 518 at 5 (1989) (governmental body must show that litigation involving a specific matter is realistically contemplated).

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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Janet Monteros', with a long horizontal line extending to the right from the end of the signature.

Janet Monteros
Assistant Attorney General
Open Records Division

JIM/nc

Ref: ID# 117927

Enclosures: Submitted documents

cc: Mr. K. Jeffrey Glenn
101 W. Caddo
Austin, Texas 78753
(w/o enclosures)