



April 8, 1999

Mr. James R. Hines
Assistant General Counsel
Office of the Governor
P.O. Box 12428
Austin, Texas 78711

OR99-0934

Dear Mr. Hines:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 124164.

The Governor's Office (the "Governor") received a request for "the applications, resumes and any other public information that's available today on the three new appointees to the UT System Board of Regents: Charles Miller and Paul Romero, both of Houston, and Woody Hunt of El Paso." It is our understanding that only one document, which was submitted to this office for review, is at issue. You assert that this document is excepted from disclosure on the basis of privacy, under sections 552.101 and 552.102 of the Government Code, and as information related to litigation, under section 552.103 of the Government Code.

The test to determine whether information is private and excepted from disclosure under common-law privacy, which is encompassed in section 552.101 and section 552.102 of the Government Code, is whether the information is (1) highly intimate or embarrassing to a reasonable person and (2) of no legitimate public concern. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 930 (1977); *Hubert v. Harte-Hanks Texas Newspapers Inc.*, 652 S.W.2d 546 (Tex. App.-Austin 1983, writ ref'd n.r.e.). The information at issue was apparently provided in response to a question on an application form for appointment to public office. Even if the document at issue contains information that may be intimate or embarrassing, there is a legitimate public interest in this information, which was provided in response to a question on an application form for public office. Open Records Decision No. 423 at 2 (1984) (scope of public employee privacy is narrow).

You also assert that the information is protected from disclosure under section 552.103(a) of the Government Code. To show that section 552.103(a) is applicable, a governmental

entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to the litigation. *University of Texas Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.--Austin, 1997, no pet.), *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). The information provided to this office does not indicate that there is pending litigation involving the Governor. Section 552.103(a) was designed to protect the litigation interests of a governmental body rather than the rights of third parties. Open Records Decision Nos. 588 at 4 (1991), 551 at 3 (1990), 542 at 4 (1990). The exception is not applicable where litigation involves only private parties. Section 552.103(a) is inapplicable in this situation. As sections 552.101, 552.102, and 552.103 do not protect this document from disclosure, it must be released.

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.

Sincerely,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref: ID# 124164

Encl. Submitted documents

cc: Ms. Mary Ann Roser
Austin American-Statesman
P.O. Box 670
Austin, Texas 78767
(w/o enclosures)