



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 15, 1992

Ms. Marilyn P. Lee
General Counsel
Texas Commission on Alcohol and Drug Abuse
720 Brazos, Suite 403
Austin, Texas 78701-2506

OR92-237

Dear Ms. Lee:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 15366.

You have received a request for information relating to a terminated employee of the Texas Commission on Alcohol and Drug Abuse (the "commission"). Specifically, the requestor seeks "any and all documents, records and/or other information placed into [the terminated employee's] personnel file while employed with your agency. . . . inclusive of any and all documents created after March 5, 1992." You advise us that the commission has made available to the requestor all documents contained in the terminated employee's personnel file. You have submitted to us for review certain other documents generated by the commission in its sexual harassment investigation of the terminated employee and submitted to the Texas Commission on Human Rights, including correspondence between the commission and the Commission on Human Rights, internal commission memorandums, statements and affidavits from commission employees, correspondence to and from the terminated employee and his attorneys, the commission personnel manual, and the personnel file of the complainant.¹ You claim that this information is exempted from required public disclosure by sections 3(a)(1) and 3(a)(3) of the Open Records Act.

¹Because the personnel file of the complainant is clearly outside the scope of the request, we will not address its availability under the Open Records Act.

You claim that the information submitted to us for review is excepted from required public disclosure by section 3(a)(3), which excepts

information relating to litigation of a criminal or civil nature and settlement negotiations, to which the state or political subdivision is, or may be, a party, or to which an officer or employee of the state or political subdivision, as a consequence of his office or employment, is or may be a party, that the attorney general or the respective attorneys of the various political subdivisions has determined should be withheld from public inspection.

Section 3(a)(3) applies only when litigation in a specific matter is pending or reasonably anticipated and only to information clearly relevant to that litigation. Open Records Decision No. 551 (1990). The pendency of a complaint before the Equal Employment Opportunity Commission (EEOC) indicates a substantial likelihood of litigation and is therefore sufficient to satisfy section 3(a)(3). Open Records Decision No. 368 (1983). Once information has been obtained by all parties to the litigation, *e.g.*, through discovery or by court order, no section 3(a)(3) interest exists with respect to that information. Open Records Decision Nos. 349, 320 (1982).

You advise us that the terminated employee has filed charges of discrimination with the Texas Commission on Human Rights and with the EEOC and that these charges are still pending. On the basis of these charges, we conclude that litigation may be reasonably anticipated. Having examined the documents submitted to us for review, we further conclude that the requested information relates to the anticipated litigation. You advise us, by a letter dated April 8, 1992, however, that attachments 12, 13, 14, 23, and 24 have already been made available to the requestor as an employee or through his attorney. It is also apparent to us that the letter that appears in attachment 22 has been made available to the requestor through his attorney. Accordingly, these documents may not be withheld from required public disclosure. We note that in our view release of these documents does not waive any privilege which may attach to the commission's submission to the Texas Human Rights Commission. The Open Records Act requires the commission to release these records as records which have previously been made available to the requestor, not as submissions to a particular agency.

The remainder of the requested information may be withheld under section 3(a)(3) until such time that this matter is resolved.

You also claim that the requested information is excepted from required public disclosure by section 3(a)(1), which excepts "information deemed confidential by law, either Constitutional, statutory or by judicial decision." You claim that section 8.02 of the Texas Commission on Human Rights Act, V.T.C.S., article 5221k and section 2000e-8(e), title 42 of the United States Code, make the requested information confidential. These provisions make it unlawful for the Texas Human Rights Commission and the EEOC, respectively, to make public information obtained in connection with certain investigations and proceedings. These provisions, however, do not apply to information in the possession of your agency and therefore do not apply to the requested information. See Attorney General Opinion JM-830 (1987) at 5-7 (copy enclosed).

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR92-237.

Yours very truly,



Mary R. Crouter
Assistant Attorney General
Opinion Committee

MRC/GK/lmm

Enclosures: Submitted Documents
Attorney General Opinion JM-830

Ref.: ID# 15366

cc: Mr. Booker T. Morris, III
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