



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 13, 1993

Ms. Dori Wind
Division Chief
Assistant County Attorney
Harris County
1001 Preston, Suite 634
Houston, Texas 77002-1891

OR93-452

Dear Ms. Wind:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, V.T.C.S. article 6252-17a. Your request was assigned ID# 20630.

The Harris County Hospital District ("the district") received a request for the following information:

1. [t]he salary of George Symes, former chief financial officer of the HCHD, including his starting salary, subsequent raises and the dates of those raises and his ending salary and the dates of those salary changes. Was he given a retro-active raise at any time?
2. George Symes start and end dates as CFO
3. The terms of his leaving the HCHD, ie., was he fired or did he resign?

As responsive to this request, you sent for our inspection a copy of Mr. Symes' earnings history report¹ and a copy of a letter from Mr. Symes to the Board of Managers of the district, which contains information about the terms of Mr. Symes' departure from the district. You assert this information is excepted from required public disclosure by sections 3(a)(2) and 3(a)(3) of the Open Records Act. We disagree and conclude that you must release the requested information.

¹We note that this report contains much more information than was requested.

Section 3(a)(3) 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, . . .

This exception enables a governmental body to protect its position in litigation. Open Records Decision No. 551 (1990). Information that relates to litigation involving a governmental body may therefore be withheld from required public disclosure under section 3(a)(3); such information must be obtained through discovery. *Id.* However, the exception does not apply to information that the opposing party to the litigation has seen or had access to. Open Records Decision Nos. 525 (1989); 349 (1982).

You assert that the requested information is the "subject of anticipated litigation." You inform us that Mr. Symes has "grieved his termination through the district's grievance process" and that "there is a pending settlement of this anticipated litigation." While it is not clear that information about Mr. Symes' salary and employment dates relates to his termination, we conclude that you may not withhold the requested information about Mr. Symes' salary and dates of his employment under section 3(a)(3), since Mr. Symes has clearly had access to such information about his own employment. Similarly, there is no section 3(a)(3) interest in the letter from Mr. Symes, the opposing party to the anticipated litigation.

You also raise section 3(a)(2) which excepts

information in personnel files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. . .

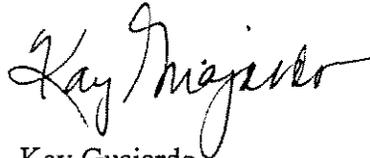
This exception applies when the release of information would result in the violation of the common-law tort of invasion of privacy through the disclosure of private facts. *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.-Austin 1983, writ ref'd n.r.e.). In order to be within the common-law tort, the information must (1) contain highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person, and (2) be of no legitimate concern to the public. *Industrial Found. of the S. v. Texas Indus. Accident Bd.* 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

Information about the salary and tenure of a public employee does not constitute highly intimate or embarrassing facts about that employee's private affairs. See Open Records Decision Nos. 342 (1982) at 3; 165 (1977) at 1-2. Nor does the release of information about a public employee's termination implicate that employee's privacy rights. See Open Records Decision No. 444 (1986). Consequently, we conclude that you

may not withhold the requested information based on section 3(a)(2). Thus, the Open Records Act requires you to release the requested information.

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 contact this office.

Yours very truly,



Kay Guajardo
Assistant Attorney General
Open Government Section

KHG/JET/jmn

Ref.: ID# 20630
ID# 20665

Enclosures: Submitted documents

cc: Andrea Greene
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