



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 21, 1994

Ms. Alana Marie Holmes
Staff Attorney
Texas Natural Resource Conservation Commission
P.O. Box 13087
Austin, Texas 78711-3087

OR94-253

Dear Ms. Holmes:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, Gov't Code, ch. 552 (the "act"). Your request was assigned ID# 23443.

The Texas Natural Resource Conservation Commission (the "commission") has received a request for sixteen categories of information. The commission does not object to the release of information sought by the requestor in seven of those categories. The commission, however, does object to the release of the information sought by the requestor in the following categories:

1. The performance appraisal of an employee "that was retrieved from my desk files" and "any other documents generated by me" regarding the employee's job performance;
2. The aforementioned employee's personnel file;
3. "All interagency memoranda, letters, and/or other documents regarding the investigation of allegations against me and my subsequent termination";
- 4 "The written statements and/or any verbal statements reduced to writing, including names, of any and all persons who made allegations against me, including those which were considered in management's decision to effect my termination";

5. "Any and all documents generated and/or collected pursuant to the investigation of the allegations against me which led to my termination or otherwise";
6. "Any final reports of any investigations of the allegations against me, including those which led to my termination";
7. "Any and all documents generated for travel to the Environmental Remediation Contracting seminars in San Francisco and Washington, D.C.";
8. "Any and all documents for hiring of interns and temporary employees in Acquisitions and Compliance Division"; and
9. "Any and all document[ation] related to the use" of a particular temporary employee.

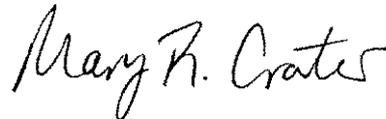
The commission contends that the foregoing information is excepted from required public disclosure by sections 552.101, 552.103(a), 552.107, and 552.111 of the act.

We first address the commission's section 552.103(a) argument for the reason that it addresses all nine categories of information. Section 552.103(a) excepts from required public disclosure information related to pending or reasonably anticipated litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.). The commission states that the requestor is a former employee who was terminated and who has filed a complaint against the commission with the federal Equal Employment Opportunity Commission and the Texas Human Rights Commission regarding his termination. Based upon prior determinations of this office, we conclude that the commission has demonstrated that litigation is reasonably anticipated. *See* Open Records Decision Nos. 336 (1982); 281 (1981). We have reviewed the information submitted by the commission and conclude that it relates to the anticipated litigation. Accordingly, the commission may withhold the information from required public disclosure under section 552.103(a) of the act.¹ Please note, however, that section 552.103(a) does not apply if the requestor has had access to the information or if litigation is no longer reasonably anticipated. *See* Open Records Decision No. 597 (1991).

¹Because we resolve this request under section 552.103(a), we need not reach the other exceptions raised by the commission at this time. We note, however, that some of the information that is excepted from required public disclosure under section 552.103(a) may also be confidential under section 552.101 in conjunction with common-law privacy. *See, e.g., Morales v. Ellen*, 840 S.W.2d 519, 524-25 (Tex. App.--El Paso 1992, writ denied) (identities of victims of and witnesses to sexual harassment).

Because case law and prior published open records decisions resolve your request, we are resolving this matter with an 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,

A handwritten signature in cursive script that reads "Mary R. Crouter".

Mary R. Crouter
Assistant Attorney General
Open Government Section

MRC/LRD/rho

Ref.: ID# 23443

Enclosures: Submitted documents

cc: Mr. Llewellyn C. Fambles
5306 Dry Wells Road
Austin, Texas 78749
(w/o enclosures)