



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

November 28, 1994

Ms. Suzzette S. Chapman  
Agent for the Custodian of  
Public Records  
Central Texas College  
P.O. Box 1800  
Killeen, Texas 76540-9990

OR94-760

Dear Ms. Chapman :

You have asked 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# 30238.

Central Texas College (the "college") received a request for various documents, most of which the college provided to the requestor. However, you contend that three of the requested documents, two employees' resumes and personnel status forms, are excepted from disclosure pursuant to section 552.103(a) of the Government Code. To show that section 552.103(a) is applicable, the college must demonstrate that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to that litigation. *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 (1990) at 4. The college has the burden of meeting both prongs of this test for information to be excepted under section 552.103(a).

You state that one of the two employees has alleged that she was discriminated against and not allowed the opportunity to apply for a position at the college. The other employee was promoted to that position. You add that the complaining employee "has stated publicly that she does not accept the findings of the internal grievance process and will pursue the matter." You contend that litigation is reasonably anticipated.<sup>1</sup>

---

<sup>1</sup>In your letter, you state that the documents are related to "impending litigation." Since you do not assert that a lawsuit has been filed, it appears that litigation is not pending. We therefore assume that your argument is that litigation is reasonably anticipated under the circumstances.

In Open Records Decision No. 452 (1986) at 4, 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.]

This office has found that litigation is reasonably anticipated when the governmental entity received an attorney's letter demanding damages and threatening to sue the governmental body. Open Records Decision No. 551. This office has also found that litigation is reasonably anticipated when a complaint has been filed against the governmental entity with the Equal Employment Opportunity Commission ("EEOC"). Open Records Decision Nos. 386 (1983) at 2; 336 (1982) at 1. However, an isolated telephone threat, without more, does not constitute a reasonable anticipation of litigation. Open Records Decision No. 452 at 5. This office also found only a "mere chance" of litigation when an individual publicly stated that he intended to sue the governmental entity, but made no affirmative steps to bring such a suit. Open Records Decision No. 331 (1982).

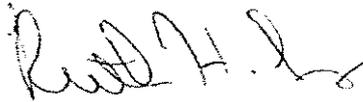
You have provided no information showing that an EEOC complaint has been filed or that the complaining employee has hired an attorney who threatens suit. Since the college has not met its burden of showing that litigation is pending or reasonably anticipated, the information at issue may not be withheld under section 552.103(a). However, some of the information in the resumes and forms at issue may be confidential and thus must be withheld from public disclosure.

The resumes and forms at issue provide the two employees' home addresses, home telephone numbers, and social security numbers. Section 552.117 provides that the home addresses and home telephone numbers of current or former employees of a governmental body may not be disclosed if the employees have validly elected to keep that information private. Section 552.024 of the Government Code provides that governmental employees who want their home addresses and home telephone numbers kept confidential must take that option within 14 days after starting or ending employment. After 14 days, an employee wanting to open or close access to this information must make that request in writing. If an election is not made, the information is publicly accessible. The governmental entity must withhold from public access the home addresses and home telephone numbers of those employees who, as of the time of the request for the information, had already elected to keep that information private. Open Records Decision Nos. 530 (1989) at 5; 482 at 4, 455 (1987). The information otherwise must be released.

Social security numbers may also be confidential. Prior to releasing any social security number the college should be sure that this information was not obtained or maintained by the college pursuant to any provision of law enacted on or after October 1, 1990. 42 U.S.C. § 405(c)(2)(C)(vii); Open Records Decision No. 622 (1994) at 4. It is a felony offense to disclose a social security number in violation of federal law. 42 U.S.C. § 408(a)(8). Section 552.352 of the Government Code also imposes criminal penalties for release of confidential information.

Since the requested resumes and forms are not excepted from disclosure under section 552.103(a), you must release these records except for any information that is confidential. 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 our office.

Yours very truly,



Ruth H. Soucy  
Assistant Attorney General  
Open Government Section

RHS/rho

Ref.: ID# 30238

Enclosures: Open Records Decision No. 622  
Submitted documents

cc: Ms. Jen Sansbury  
Killeen Daily Herald  
P.O. Box 1300  
Killeen, Texas 76540  
(w/o enclosures)