



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

April 24, 1995

Honorable James M. Kuboviak  
Brazos County Attorney  
300 E. 26th Street, Suite 325  
Bryan, Texas 77803

OR95-196

Dear Mr. Kuboviak:

You ask 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# 31538.

The Brazos County Treasurer received a request for copies of a payroll time sheet of an employee of the sheriff's office for the time period January 1-15, 1995. You claim that this information may be excepted from disclosure pursuant to sections 552.101, 552.102, and 552.103 of the Government Code.

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." In order for information to be protected from public disclosure under the common-law right of privacy as incorporated by section 552.101, the information must meet the criteria set out in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The court stated that:

information ... is excepted from mandatory disclosure under Section 3(a)(1) as information deemed confidential by law if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public.

540 S.W.2d at 685; Open Records Decision No. 142 (1976) at 4 (construing former V.T.C.S. art. 6252-17a, § 3(a)(1)).

Section 552.102 protects personnel file information only if its release would cause an invasion of privacy under the test articulated for common-law privacy under section 552.101. *Hubert v. Harte-Hanks Tex. Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.) (court ruled that test to be applied in decision under statutory predecessor to § 552.102 was the same as that delineated in *Industrial Found.* for statutory predecessor to § 552.101). Accordingly, we will consider the arguments for withholding information from required public disclosure under section 552.101 and section 552.102 together.

You argue that the release of the time sheet implicates the employee's privacy or property interests because you say the amount of time an employee takes for personal reasons is private information. The public generally has a legitimate interest in knowing about the job performance of public employees. *See* Open Records Decision Nos. 444 (1986), 405 (1983), 400 (1983). Additionally, information about the names of employees taking sick leave and the dates thereof is not highly intimate or embarrassing information. Open Records Decision No. 336 (1982). We believe the public has a legitimate interest in the requested time sheets. *See* Open Records Decision Nos. 444 (1986), 405 (1983), 400 (1983). Therefore, you may not withhold the requested document pursuant to sections 552.101 and 552.102.

Section 552.103(a) excepts information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

To be excepted under section 552.103(a), information must relate to litigation that is pending or reasonably anticipated. *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. You assert that section 552.103 excepts the requested time sheet from disclosure because several former employees have sued the county for violation of their constitutional rights and violation of the Texas Whistleblower Act, Government Code chapter 554.

A governmental body has the burden of proving that records are excepted from public disclosure. Attorney General Opinion H-436 (1974). If a governmental body does not claim an exception or fails to show how it applies to the records, it will ordinarily waive the exception, unless the information is confidential by law. See Attorney General Opinion JM-672 (1987). Specifically, section 552.103 does not apply absent a showing of a direct relationship between the information sought and the pending or contemplated litigation. Open Records Decision No. 429 (1985). In this instance, you have not shown how the information relates to the pending litigation. Nor do the records themselves reveal how the requested information relates to the pending litigation, especially in light of the fact that the litigation was filed on November 11, 1994, and the requested time sheets are for the time period January 1-15, 1995. Therefore, you must release the requested information.

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 under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay H. Guajardo  
Assistant Attorney General  
Open Government Section

KHG/LMM/rho

Ref.: ID# 31538

Enclosures: Submitted documents