



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 22, 1995

Mr. Edward W. Dunbar
Dunbar & Barill
1700 North Stanton
El Paso, Texas 79902

OR95-805

Dear Mr. Dunbar:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 33432.

The El Paso Community College (the "college") has received a request from an unsuccessful job applicant for "all of my evaluations for any interviews I have had in the past with the College. Please include anything that pertains to these interviews" You assert that the requested information is excepted from required public disclosure pursuant to sections 552.103 and 552.111 of the Government Code.

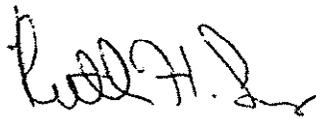
Section 552.103 excepts from required public disclosure information relating to litigation "to which the state or political subdivision . . . is or may be a party." Gov't Code § 552.103(a). Section 552.103 requires concrete evidence that litigation is realistically contemplated; it must be more than mere conjecture. Furthermore, the requested information must relate to the pending or reasonably anticipated litigation. Open Records Decision Nos. 518 (1989) at 5, 328 (1982).

You state that the requestor has filed a complaint with the Equal Employment Opportunity Commission (EEOC) alleging that the college discriminated against her on the basis of age, gender and ethnicity in denying her job application and that the complaint is currently pending. On this basis, we conclude that litigation is reasonably anticipated. See Open Records Decision Nos. 386 (1983), 336 (1982). You have submitted for our review evaluations of the requestor and the other candidates for the positions for which she applied. From our review of the records, we believe that the records show that they relate to the allegations in the EEOC complaint. Therefore,

we conclude that the records you have submitted may be withheld from required public disclosure under section 552.103.¹ These records may not be withheld if the requestor has already obtained or had access to them, *see* Open Records Decision No. 386 (1983), or if the litigation is no longer pending, Attorney General Opinion MW-575 (1982).²

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,



Ruth H. Soucy
Assistant Attorney General
Open Government Section

RHS/MRC/rho

Ref.: ID# 33432

Enclosures: Submitted documents

cc: Ms. Charlotte Dettman
7337 Royal Arms
El Paso, Texas 79912
(w/o enclosures)

¹Because we resolve your request under section 552.103, we do not address section 552.111.

²The records you have submitted contain social security numbers. A social security number or "related record" is exempted from required public disclosure under section 552.101 of the act in conjunction with the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), if it was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994); *see also* 42 U.S.C. § 405(c)(2)(C)(vi) (governing release of social security number collected in connection with the administration of any general public assistance, driver's license or motor vehicle registration law). Based on the information you have provided, we are unable to determine whether the social security numbers at issue are confidential under this federal statute. We note, however, that section 552.352 of the Open Records Act imposes criminal penalties for the release of confidential information. Therefore, prior to releasing any social security number information in the event the litigation has concluded or section 552.103 is otherwise no longer applicable, the college should ensure that the information is not confidential under federal law.