



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 26, 1996

Mr. Patrick S. Dohoney
Assistant District Attorney
Tarrant County
Justice Center
401 W. Belknap
Fort Worth, Texas 76196-0201

OR96-0398

Dear Mr. Dohoney:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 38547.

The Tarrant County Sheriff's Department (the "department") received two letters from the same requestor. By her first letter, the requestor seeks "copies of all my personnel files that the department has in their files regarding me since my application to work with the Sheriff's Department." By her second letter she requests a copy of "a separate file that may contain personnel information on me relating to my employment post-medical treatment." You have submitted to this office information about the requestor's medical condition that is presumably maintained in her medical file.¹ You contend that this information is excepted from disclosure by sections 552.103 and 552.107 of the Government Code.

To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 551 (1990). Litigation cannot be regarded as "reasonably anticipated" unless there is more than a "mere chance"

¹Because you did not submit the requestor's personnel file to the office for review, we assume that you have released this file to the requestor. We rule here only on the required public disclosure of the requestor's medical file.

of it--unless, in other words, we have concrete evidence showing that the claim that litigation may ensue is more than mere conjecture. Open Records Decision Nos. 452 (1986), 331 (1982), 328 (1982). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision Nos. 452 (1986), 350 (1982). The requestor is in the process of appealing the denial of an accommodation under the Americans with Disabilities Act to the Tarrant County Sheriff's Department Civil Service Commission (the "commission"). You characterize this process as "administrative litigation." However, a hearing before the commission is not a "contested case" under the Administrative Procedure Act, Gov't Code §§ 2001.001 *et seq.* (1993), and we have not recognized such a hearing as a quasi-judicial proceeding under section 552.103(a). *See Open Records Decision No. 588 (1991).* Furthermore, you have offered no evidence to show that the requestor has threatened legal action in the event that she is unsuccessful in her appeal to the commission. We conclude that the county has not demonstrated that litigation is either pending or reasonably anticipated. Therefore, the requested information is not excepted from disclosure under section 552.103(a).

Section 552.107(1) excepts from disclosure information that an attorney cannot disclose because of a duty to his client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107 covers only "privileged information," that is, information that reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinions; it does not apply to all client information held by a governmental body's attorney. *Id.* at 5. Section 552.107(1) does not except purely factual information from disclosure, Open Records Decision Nos. 574 (1990), 559 (1990), nor does it protect information gathered by an attorney as a fact-finder. Open Records Decision No. 462 (1987). The documents at issue do not contain any information that reflects communications between an attorney and a client. Therefore, the information in the medical file is not excepted from disclosure by section 552.107(1).

We believe that Title I of the Americans with Disabilities Act (the "ADA"), 42 U.S.C. § 12111 *et seq.* (1990), controls the release of the requested information. The ADA requires an employer to maintain information about the medical condition of an employee in a separate medical file that must be treated as a confidential medical record. *Id.* § 12112(d)(3)(B), (4)(C). The ADA provides for release of medical information only in limited circumstances to individuals charged with specific responsibilities. *Id.* § 12112(d)(3)(B). Therefore, the requested information should be released only in accordance with the ADA.

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

Yours very truly,


Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref: ID# 38547

Enclosures: Submitted documents