



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 21, 1997

Mr. Ron M. Pigott
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR97-0889

Dear Mr. Pigott:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 105990.

The Texas Department of Public Safety (the "department") received a request for "any and all statements and investigation information regarding an incident occurring at 604 S. Chestnut, Pearsall, Texas, concerning the alleged assault on Valentina Vela by a uniformed DPS trooper." The requestor also seeks "any information concerning any employment applications, promotions, awards, training, reprimands, complaints, disciplinary actions, qualifications, educational background and other information relating to the trooper or troopers involved." You originally asserted that all investigation information, which you submitted to this office as exhibit C, was excepted from required public disclosure under sections 552.103 and 552.108 of the Government Code. You later receded your request for a decision from this office concerning exhibit C. We, therefore, assume that the department has, or soon will, release the information in exhibit C.

As for the requested personnel information, you indicate that, with the exception of one document, which you have submitted as exhibit B, the department will release the information. You continue to assert that exhibit B is excepted from public disclosure based on section 552.103 of the Government Code.

Section 552.103(a) of the Government Code reads as follows:

(a) Information is excepted from [required public disclosure] if it is information:

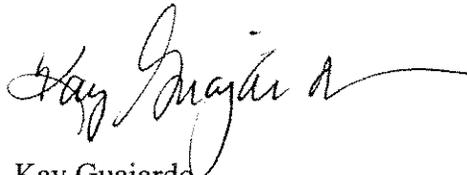
(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party;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

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

To 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. You assert that exhibit B relates to reasonably anticipated litigation. However, when the opposing party in the litigation has seen or had access to information, there is no justification for withholding that information from the requestor pursuant to section 552.103(a). Open Records Decision Nos. 349 (1982), 320 (1982). As exhibit B is a letter from the potential opposing party's attorney, we conclude that section 552.103 is not applicable. Accordingly, the department may not withhold exhibit B from the requestor based on section 552.103 of the Government Code.

We are resolving this matter with this 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 may 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,



Kay Guajardo
Assistant Attorney General
Open Records Division

KHG/rho

Ref.: ID# 105990

Enclosures: Submitted documents

cc: Mr. John W. Bull
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(w/o enclosures)