



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 20, 1997

Mr. Rodolfo Rodriguez, Jr.
Locke, Purnell, Rain & Harrell
2200 Ross Avenue, Suite 2200
Dallas, Texas 75201-6776

OR97-1162

Dear Mr. Rodriguez:

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# 106654.

The Texas Turnpike Authority (the "turnpike authority"), which you represent, received a request for the current title and salary of three of its employees. You contend that the requested information is excepted from public disclosure by sections 552.101 and 552.103 of the Government Code. You have submitted the information at issue for our review.

Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state or a political subdivision is or may be a party. The turnpike authority has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing 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 turnpike authority must meet both prongs of this test for information to be excepted under section 552.103(a).

The mere chance of litigation will not trigger section 552.103(a). Open Records Decision No. 452 (1986) at 4 and authorities cited therein. To demonstrate that litigation is reasonably anticipated, the governmental body must furnish concrete evidence that litigation involving a specific matter is realistically contemplated and is more than mere conjecture. *Id.* Concrete evidence to support a claim that litigation is reasonably anticipated may include, for example, the governmental body's receipt of a letter containing a specific threat to sue the governmental body from an attorney for a potential opposing party. Open Records Decision No. 555 (1990); *see* Open Records Decision No. 518 (1989) at 5 (litigation must

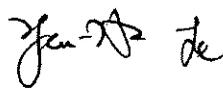
be “realistically contemplated”). On the other hand, this office has determined that if an individual publicly threatens to bring suit against a governmental body, but does not actually take objective steps toward filing suit, litigation is not reasonably anticipated. See Open Records Decision No. 331 (1982). Nor does the mere fact that an individual hires an attorney and alleges damages serve to establish that litigation is reasonably anticipated. Open Records Decision No. 361 (1983) at 2. Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 (1986) at 4.

You state that “based on the tone and tenor of [the requestor’s] memoranda to her superiors at the agency, the [turnpike authority] is justified in believing that [the requestor] intends . . . to sue the [turnpike authority].” However, the requestor has neither threatened to sue the turnpike authority nor has she taken objective steps toward filing suit. We conclude that you have failed to make the requisite showing that litigation is reasonably anticipated and, therefore, you may not withhold the information under section 552.103.

You also contend that the requested information is excepted from public disclosure by section 552.101 which encompasses the doctrine of common-law privacy and excepts from disclosure private facts about an individual. *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), cert. denied, 430 U.S. 931 (1977). Under common-law privacy, information may be withheld from the public when 1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and 2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 (1992) at 1. Upon review of the requested information, we conclude that the information is not highly intimate and embarrassing. Common-law privacy does not protect a public employee’s title or salary; such information does not pertain to the employee’s private affairs, and the public has a legitimate interest in it. See *Industrial Found.*, 540 S.W.2d at 685; see also Open Records Decision No. 342 (1982) at 3 (certain information about public employees, including position, experience, tenure, salary, and educational level, has long been held disclosable). Because the requested information may not be withheld under either section 552.101 or 552.103 of the Government Code, you must release the information to the requestor.

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,



Yen-Ha Le
Assistant Attorney General
Open Records Division

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Ref.: ID# 106654

Enclosure: Submitted document

cc: Ms. Peggy Moore
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(w/o enclosure)

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