



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 23, 1997

Mr. S. Stephen Hilmy
Gary, Thomason, Hall & Marks
210 Carancahua
P.O. Box 2888
Corpus Christi, Texas 78403

OR97-1688

Dear Hilmy:

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# 107358.

The Corpus Christi Junior College District (the "district"), which you represent, received several requests from the same requestor for various records, some pertaining to a grievance filed by the requestor and others to a termination involving another employee. You state you have made available to the requestor much of the information requested, but seek to withhold certain documents under sections 552.101, 552.102 and 552.103 of the Government Code. We have considered your arguments and have reviewed the information submitted.

Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the governing body is or may be a party. The district 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 district must meet both prongs of this test for information to be excepted under section 552.103(a).

You inform us that litigation is currently pending between the district and a former employee relating to the former employee's termination and other claims. You have submitted as responsive to the request a memorandum dated December 13, 1994 relating to this former employee's discharge. We therefore find that the district has met its burden under section 552.103(a) with regard to this document and may therefore withhold it from disclosure under this

section.¹

You next seek to withhold under sections 552.101 and 552.102 eleven separate documents pertaining to employee discipline. Section 552.101 excepts from required public disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision and incorporates the doctrine of common-law privacy. For information to be protected from public disclosure under the common-law right of privacy, the information must meet the criteria set out in *Industrial Foundation of the South v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). 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. Section 552.102 protects "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." The protection of section 552.102 is the same as that of the common-law right to 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.). Consequently, we will consider these two exceptions together.

The information submitted in Attachments "C" through "M" are personnel records which you state primarily involve warnings or disciplinary directives to employees of Del Mar College other than the requestor. Upon review of these records, we conclude they contain no information that is highly intimate or embarrassing such that their release would be highly objectionable to a person of ordinary sensibilities. Further, we note that a public employee's job performance does not generally constitute his or her private affairs, Open Records Decision No. 470 (1987), and there is a legitimate public interest in the job performance of public employees. Thus, the district may not withhold the information in Attachments "C" through "M" under sections 552.101 or 552.102 and must release this 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,



Michael A. Pearle
Assistant Attorney General
Open Records Division

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¹As we resolve your request with regard to this document under section 552.103(a), we need not address your arguments for withholding this document under sections 552.101 or 552.102.

Ref.: ID# 107358

Enclosures: Submitted documents

cc: Mr. Jeffrey A. Stromer
2180 Piedmont
Tripoli, Iowa 50676
(w/o enclosures)

