



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

March 19, 1998

Ms. Marva M. Gay  
Assistant General Counsel  
Office of the Harris County District Attorney  
201 Fannin, Suite 200  
Houston, Texas 77002-1901

OR98-0754

Dear Ms. Gay:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code, the Texas Open Records Act. Your requests were assigned ID#s 113454 and 113535.

The Harris County Probation Department (the "department") received three different requests from the same requestor. The first request sought all records pertaining to the requestor's job performance, including any complaint information. The second request sought information concerning specific incidents, as well as a copy of the Harris County Employment Assistance Program policy and procedure. The third request sought the same records asked for in the previous requests. Responsive documents were submitted to this office for review.

You initially asserted that section 552.103(a) of the Government Code protected the records at issue from disclosure, arguing that the records at issue pertained to a discrimination complaint filed with the Equal Employment Opportunity Commission ("EEOC").<sup>1</sup> You have informed this office that the EEOC complaint has been withdrawn. Therefore, the department is withdrawing its section 552.103(a) argument against disclosure and is releasing some records to the requestor.

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<sup>1</sup>This office has stated that a pending EEOC complaint indicates litigation is reasonably anticipated for purposes of section 552.103(a) of the Government Code. Open Records Decision Nos. 386 (1983) at 2, 336 (1982) at 1.

However, you still seek a decision from this office regarding records designated collectively as Exhibit F.<sup>2</sup>

The documents labeled Exhibit F were submitted to this office as being responsive to all of the requests, including the first two requests for information. In your initial letters, you argued that section 552.103(a) protected Exhibit F from disclosure, but did not assert other exceptions to withhold this information. The first two requests for information were received by the department on December 18, 1997, and December 29, 1997. By correspondence dated February 9, 1998, you now assert that sections 552.101 and 552.108 protect the documents in Exhibit F from disclosure.

The Open Records Act imposes a duty on governmental bodies that believe information falls within an exception to timely seek a decision pursuant to section 552.301. The governmental body must, within ten business days after receiving the written request, ask for a decision as to whether information falls within the stated exception. *Id.* The time limitation found in section 552.301 is an express legislative recognition of the importance of having public information produced in a timely fashion. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ). Because you failed to timely raise section 552.108 as an exception to disclosure, the information at issue is presumed public. Gov't Code § 552.302; Open Records Decision No. 515 (1988) (governmental body cannot raise additional exceptions to disclosure after ten day period). However, this presumption of openness can be overcome by a compelling demonstration that the information should not be made public, such as a showing that records are confidential by statute. Open Records Decision No. 150 (1977). You assert that Exhibit F contains information that is protected from disclosure under section 552.101 of the Government Code.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section protects from disclosure information that is protected by a common-law right of privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). In Open Records Decision No. 123 (1976) at 5, this office recognized that there may be "special circumstances" which would make certain information confidential. To show the applicability of section 552.101 to information, there must be a demonstration of "truly exceptional circumstances." Open Records Decision No. 169 (1977) at 6. You have made such a demonstration for the majority of records in Exhibit F. We have marked the documents to show which records must be withheld from disclosure. The remaining information must be released.<sup>3</sup>

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

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<sup>2</sup>As it is our understanding that the only remaining documents you seek to withhold are those labeled as Exhibit F, we do not address the other submitted records.

<sup>3</sup> Section 58.007(c) of the Family Code provides that "the records and files of a juvenile court, a clerk of a court, a juvenile probation department, or a prosecuting attorney relating to a child who is a party to a proceeding" are generally confidential. One document contains some information that implicates section 58.007(c). However, since this document is protected from disclosure in its entirety as discussed above, we need not further address section 58.007(c).

to us in this request and should not be relied upon as a previous determination regarding any other records. If you have any questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Ruth H. Soucy". The signature is fluid and cursive, with the first name "Ruth" being the most prominent.

Ruth H. Soucy  
Assistant Attorney General  
Open Records Division

RHS/ch

Ref: ID# 113535 and ID# 113454

Enclosures: Submitted documents

cc: Mr. Gregory Crawford  
3340 West Dallas  
Houston, Texas 77019  
(w/o enclosures)