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RD-386

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April 20, 1992

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Opinion Committee

Honorable Dan Morales
Attorney General, State of Texas
Office of the Attorney General
7th Floor, Price Daniel, Sr. Building
Austin, Texas

Attention: Ms. Madeleine Johnson, Chair, Opinions Committee

Dear Ms. Johnson:

On April 13, 1992, we received a written request from a Bar admission applicant seeking "all records, including the names of the complainants with sufficient advance notice, to enable me to adequately prepare [his] defense" for a hearing on the Board's preliminary determination that he does not have the present good moral character and fitness required to admission to the Bar. A copy of the applicant's request letter is enclosed.

The Board's enabling statute is found in Tex. Gov. Code Ann, Sec. 82.001 et. seq. Section 82.003(a) provides that the Board is subject to the Open Records Act "except as provided by subsections (b) and (c)." Subsection (b) exempts from disclosure bar examination questions. Subsection (c) exempts from disclosure "deliberations relating to moral character and fitness of an applicant . . . and records relating to these subjects," but also provides that upon written request, an applicant is entitled to obtain:

"records relating to the applicant's own moral character and fitness unless the person who supplies the information has requested that it not be disclosed. The Board shall not inquire of a person who supplies information whether the person objects to disclosure nor inform the person of the right to object."

The Board has received no requests for confidentiality from persons who supplied it with information; therefore, we believe the information in the applicant's file is presumptively available to him under the terms of 83.003(c), unless it falls within an exception under the Open Records Act.

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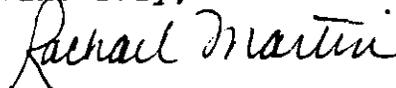
We have reviewed this applicant's file and determined that he is entitled to obtain most of it. However, the file contains certain documents which we believe are excepted from disclosure, under the Open Records Act itself. These items consist of in-house notes and memoranda among the Board's Staff Attorney, Director of Character and Fitness (who is responsible for moral character and fitness investigations) and the Executive Director. All of these items contain advice, recommendations, and/or opinions. Copies of these documents are enclosed in two groups, with explanatory cover sheets. (Some of these documents are highlighted to indicate the portions which we believe constitute advice, recommendations, or opinions. It is our intention to mask such portions and provide copies of the masked document to the applicant.)

We believe that these enclosed documents, or the highlighted portions thereof, fall within the scope of Sec. 3(a)(11), Art. 6252-17a, which excepts from disclosure "inter-agency or intra-agency memorandums [sic.] or letters which would not be available to a party in litigation with the agency." The following Open Records Decisions appear to support the application of Sec. 3(a)(11) to the enclosed records: Nos. 574 (1990); 582 (1990); 565 (1990), in part; 559 (1990); 549 (1990); and 538 (1990).

We have also enclosed a copy of our letter to the applicant, informing him that we have requested an open records decision as to certain of the requested documents, and offering to provide him with copies of the remainder of his file upon his payment of the reasonable copy charges. You will notice that this letter to the applicant is dated within ten days of the Board's receipt of his request.

We would appreciate the issuance of an Open Records Decision on this matter, so that we will know how to proceed as to the release of the pertinent documents. Please contact me if you need additional information or documents.

Sincerely,



Rachael Martin
Executive Director

Enclosures

cc: Mr. Edward Falk (without enclosures)

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