



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 30, 1994

Ms. Mercedes Leal
Senior Assistant County Attorney
Harris County
1001 Preston, Suite 634
Houston, Texas 77002-1891

OR94-313

Dear Ms. Leal:

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# 22949.

Harris County (the "county") received an open records request from a person for her own personnel file. You indicate that you will release some of the requested documents. However, you are seeking to withhold the remaining documents, which you have submitted for review, under sections 552.103(a) and 552.108 of the Government Code. You also claim that four tape recordings of conversations relating to the requestor's complaints are not part of the requestor's personnel file and, thus, have not been requested. You have not submitted the tape recordings for review.

You first argue that section 552.103(a) excepts from disclosure the documents that you have marked as exhibits 3, 4, 5, and 6. We conclude that some of this information is excepted from disclosure under section 552.103(a). To secure the protection of section 552.103(a), a governmental body must demonstrate that a judicial or quasi-judicial proceeding is pending or reasonably anticipated and that the requested information relates to that judicial or quasi-judicial proceeding. Open Records Decision No. 555 (1990) at 2. In this instance you have made the required showing that some of the requested information in exhibits 3, 4, 5, and 6 relates to anticipated litigation for purposes of section 552.103(a). Here the requestor has filed charges of sexual harassment and sexual discrimination with the Equal Employment Opportunity Commission and the state Commission on Human Rights. These charges are expected to culminate in litigation with the county as defendants to the litigation. Therefore, the information relating to the

charges of sexual harassment and sexual discrimination may be withheld under section 552.103(a). We have marked this information accordingly. The remaining information may not be withheld under section 552.103(a).

In reaching this conclusion, however, we assume that the opposing party to the litigation has not previously had access to the information at issue and that the litigation is still pending. Absent special circumstances, once information has been obtained by all parties to the litigation, through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349, 320 (1982). Moreover, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982). Therefore, if the requestor has previously had access to any of the information that may be excepted from disclosure under section 552.103(a), then you may not withhold that information under section 552.103(a). Similarly, if the requestor's charges have been resolved, you may not withhold any of the information you submitted for review under section 552.103(a).¹

Next, you argue that the documents contained in exhibits 3, 4, and 5 are excepted from disclosure under section 552.108 of the Government Code. We disagree. In pertinent part, section 552.108 excepts from required public disclosure "[a] record of a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . ." Gov't Code § 552.108(a). In cases that are still under active investigation or prosecution, section 552.108 excepts from disclosure all information except that generally found on the first page of the offense report. See generally *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). Once a case is closed, however, a law enforcement agency may withhold information under section 552.108 only if its release would unduly interfere with law enforcement or crime prevention. See *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision Nos. 444, 434 (1986). In this case, you concede that your investigation into the allegations made by the requestor is closed. Furthermore, you have not established that the release of any of this information will unduly interfere with law enforcement. Therefore, you may not withhold any of the information you submitted for review under section 552.108.

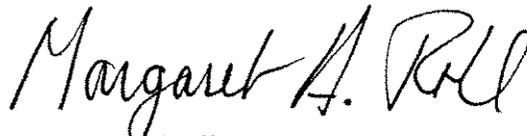
¹We note, however, that some of the information that may be protected by section 552.103(a) may also be protected by common-law privacy under section 552.101. For example, the identities of the victims of and witnesses to sexual harassment will generally be private under section 552.101. See *Morales v. Ellen*, 840 S.W.2d 519, 524-25 (Tex. App.--El Paso 1992, writ denied). On the other hand, we do not believe that the document marked as exhibit 6 is excepted from disclosure under section 552.101. A description of a disciplinary action is not private under section 552.101. Open Records Decision No. 329 (1982) at 2.

Finally, you argue that four tape recordings of conversations regarding the requestor's complaints are not part of the requestor's personnel file and, thus, do not need to be released in response to the requestor's request. For the purposes of the Open Records Act, any information relating to an employee's employment relationship and the terms of employment is part of that employee's personnel file. Open Records Decision No. 327 (1982) at 2. Therefore, we believe that the two tape recordings of the conversations with the requestor are part of the requestor's personnel file. Whether the other two tape recordings are part of the requestor's personnel file for purposes of the Open Records Act will depend on the content of the conversations. If the conversations concern the requestor, the tape recordings are part of the requestor's personnel file.

We cannot determine, however, whether these tape recordings are excepted from disclosure under section 552.108 or section 552.103, as you claim.² To determine whether particular information relates to pending litigation, this office must examine the information. Open Records Decision No. 551 (1990) at 5. Similarly, whether releasing particular information will unduly interfere with law enforcement must be determined on a case-by-case basis. Open Records Decision No. 434 (1986) at 2. Therefore, if after receiving this letter, you still wish to withhold all or parts of the four tape recordings, you must submit them for our review.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Margaret A. Roll
Assistant Attorney General
Open Government Section

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Ref.: ID# 22949

Enclosures: Marked documents

²You claim that a lawsuit currently pending in federal court permits you to withhold the tape recordings under section 552.103(a). The requestor is not the opposing party in this lawsuit. Therefore, we do not know that the opposing party in the litigation has had access to the recorded conversations with the requestor, and section 552.103(a) will permit you to withhold this information if it is related to the pending litigation.

cc: Ms. Laura Key
24622 Brill Lane
Tomball, Texas 77375
(w/o enclosures)