



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 18, 1994

Mr. Jesús Toscano, Jr.
Administrative Assistant City Attorney
City of Dallas
City Hall
Dallas, Texas 75201

OR94-453

Dear Mr. Toscano:

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# 26229.

The City of Dallas (the "city") received a request for "all pertinent information" regarding a sexual harassment case investigated by the city. The employee who alleged the harassment has filed a complaint against the city with the Equal Employment Opportunity Commission ("EEOC"). You contend that the information at issue is excepted from disclosure under sections 552.103 and 552.107 of the Open Records Act.

To secure the protection of section 552.103, the city must demonstrate 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 city has provided information that shows there is a pending EEOC complaint against the city based on allegations of sexual harassment. This office has stated that a pending EEOC complaint indicates litigation is reasonably anticipated and therefore meets the first prong of the section 552.103 test. Open Records Decision Nos. 386 (1983) at 2; 336 (1982) at 1. A number of documents and tapes were submitted to this office for review. All of the tapes and most of the documents appear to be related to the litigation. However, the city also submitted an organizational chart that does not appear related to the litigation. Since the city has met both prongs of the section 552.103 test concerning the tapes and the documents except for the chart, this information may be withheld from disclosure under section 552.103. However, the organizational chart may not be withheld from disclosure under section 552.103.

Section 552.107 protects "information that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Rules of the State Bar of Texas." This section will protect information that reveals client confidences or the attorney's legal advice, opinions and recommendations. Open Records Decision No. 574 (1990). However, you have presented no information to show that the organizational chart reveals client confidences or an attorney's legal advice, opinions and recommendations. Therefore, since the organizational chart may not be withheld under either section 552.103 or 552.107, it must be disclosed to the requestor.

Generally, once information has been obtained by all of the parties to litigation, *e.g.* through discovery or otherwise, no section 552.103 interest exists with respect to that information. Open Records Decision No. 349 (1982) at 2. The applicability of section 552.103 also generally ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982) at 3. We note, however, that some of the information submitted to this office concerns sexual harassment and is protected by a common-law right of privacy under section 552.101 of the Open Records Act. You may not disclose information made confidential under section 552.101 even after litigation has concluded. *See* Gov't Code § 552.352 (distribution of confidential information is a criminal offense).¹

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

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Government Section

RHS/rho

Ref.: ID# 26229

Enclosures: Submitted documents

cc: Ms. Marilyn F. Banks
2422 Prichard Lane
Dallas, Texas 75227
(w/o enclosures)

¹We note, however, that information about a requestor may not be withheld under section 552.101 on the basis of protecting the requestor's own common-law privacy interests. Open Records Decision No. 481 (1987) at 4.