



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

August 23, 1994

Mr. Robert J. Young  
Dallas County Community College District  
R. L. Thornton, Jr. Building  
701 Elm Street, Room 400  
Dallas, Texas 75202-3299

OR94-475

Dear Mr. Young:

The Dallas County Community College District (the "district") received a request for certain documents concerning a former employee. The district has asked if this information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. That inquiry was assigned ID# 24614.

The district has already provided most of the requested documents. However, the district contends that several documents are excepted from disclosure under section 552.103. To show the applicability of section 552.103, a governmental entity must show 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.

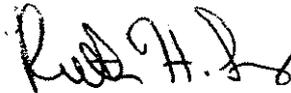
The district must meet both prongs of this test for information to be excepted under 552.103. The district has met its burden of showing that litigation is pending, by providing documents showing that the former employee has filed a complaint with the Equal Employment Opportunity Commission ("EEOC") against the district and that these complaints are pending. 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. To show that the information at issue is related to this reasonably anticipated litigation, you have submitted to this office copies of the internal memoranda and reports at issue. A review of the documents indicates that they are related to the EEOC complaint. The district has

therefore met both prongs of the section 552.103 test. Since the district has met its burden of showing that section 552.103 is applicable, the documents at issue may be withheld from disclosure.<sup>1</sup>

In reaching this conclusion, we assume that the opposing party to the litigation has not previously had access to the records at issue. Absent special circumstances, once information has been obtained by all parties to the 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. If the opposing parties in the anticipated litigation have seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103. The applicability of section 552.103 also ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982) at 3. We note that since the section 552.103 exception is discretionary with the governmental entity asserting the exception, it is within the district's discretion to release this information to the requestor. Gov't Code § 552.007; Open Records Decision No. 542 (1990) at 4.

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/MJO/rho

Ref.: ID# 24614

Enclosures: Submitted documents

cc: Mr. John E. Schulman Esq.  
4555 West Lovers Lane  
Dallas, Texas 75209  
(w/o enclosures)

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<sup>1</sup>Because these documents may be withheld from disclosure under section 552.103, we do not need at this time to consider your argument that the documents are excepted from disclosure under section 552.111.