



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 21, 1994

Richard Rafes, J.D., Ph.D.
Vice President for Legal Affairs
and General Counsel
University of North Texas
P.O. Box 13426
Denton, Texas 76203-6426

OR94-731

Dear Dr. Rafes:

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# 26737.

The University of North Texas (the "university") received a request for its response to the Equal Employment Opportunity Commission ("EEOC") complaint filed by the requestor. You contend that the requested information is excepted from required public disclosure under section 552.103 of the Government Code.

Section 552.103(a) excepts from disclosure information

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

To be excepted under section 552.103(a), information must relate to litigation that is pending or reasonably anticipated. *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. However, once information has been obtained by all parties to the litigation, e.g., through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349, 320 (1982).

The documents submitted for our review relate to a pending EEOC complaint. The pendency of a complaint before the EEOC indicates a substantial likelihood of litigation and is therefore sufficient to satisfy section 552.103. Open Records Decision Nos. 386 (1983); 336, 326 (1982). However, several of the documents demonstrate on their face that the requestor has previously had access to the information. These documents may not be withheld under section 552.103 of the Government Code. For your convenience, we have marked the documents that do not demonstrate on their face that the requestor has previously had access to the information. These documents may be withheld under section 552.103 of the Government Code provided that the requestor has not previously had access to them.¹ The remaining documents must be released.

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 our office.

Yours very truly,



Margaret A. Roll
Assistant Attorney General
Open Government Section

MAR/LBC/rho

Ref.: ID# 26737

Enclosures: Marked documents

cc: Ms. Rose Knotts
1224 Ridgecrest Circle
Denton, Texas 76205
(w/o enclosures)

¹For example, although we have marked the document from Max Oelschlaeger to Bill McKee dated January 27, 1993, as part of the information that may be withheld, the document was written by Mr. Oelschlaeger as the requestor's representative. If the requestor was privy to the document or given a copy by Mr. Oelschlaeger, it may not be withheld by the university under section 552.103.

Mr. H. N. Cunningham
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(w/o enclosures)