



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

April 24, 1995

Mr. Randall L. Patterson  
City Attorney  
City of Brenham  
P.O. Box 1059  
Brenham, Texas 77834-1059

OR95-199

Dear Mr. Patterson:

You have asked 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# 31222.

The City of Brenham (the "city") received a request from a former employee for copies of tape recordings from three meetings. It is our understanding that these were not public meetings, but rather were meetings between city employees and their supervisors to discuss allegations of sexual harassment. You indicate that the former employee has filed a discrimination complaint against the city with the Equal Employment Opportunity Commission ("EEOC"), alleging sexual harassment. You contend that the recordings at issue are excepted from disclosure under section 552.103 of the Government Code.

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.

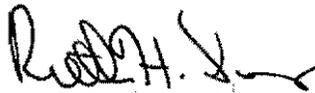
You submitted to this office for review one tape recording. You indicate that this is a representative sample of tape recordings that are responsive to the request. Our review of the tape indicates that it is related to the subject of the pending

EEOC complaint. Since the city has met its burden of showing that the requested information is related to reasonably anticipated litigation, the requested tape recordings may be withheld from disclosure under section 552.103(a).<sup>1</sup>

Generally, once information has been obtained by all of the parties to litigation 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 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. The city 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).<sup>2</sup>

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy  
Assistant Attorney General  
Open Government Section

RHS/KHG/rho

Ref.: ID# 31222

Enclosure: Submitted tape recording

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<sup>1</sup>In reaching our conclusion here, we assume that the "representative sample" tape recording submitted to this office is truly representative of the responsive tape recordings. *See* Open Records Decision Nos. 499, 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

<sup>2</sup>We 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.