



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

September 29, 1995

Mr. Edward W. Dunbar  
Law Offices of Dunbar & Barill, L.L.P.  
1700 North Stanton  
El Paso, Texas 79902

OR95-1026

Dear Mr. Dunbar:

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# 35248.

The El Paso County Community College District (the "district") received an open records request for the requestor's employment records and all information pertaining to the selection process of tenured instructor positions at the college for which the requestor applied. You contend that section 552.103(a) of the Government Code, commonly referred to as the litigation exception, protects from required disclosure the information requested. You inform us that the requestor has filed a charge of age discrimination against the district which is pending with the Equal Employment Opportunity Commission ("EEOC"). You have submitted for our review the documents at issue.<sup>1</sup>

This office has previously held that a pending complaint before the EEOC indicates a substantial likelihood of potential litigation. Open Records Decision Nos. 386 (1983), 336 (1982), 281 (1981). Therefore, the district has met the first prong of the section 552.103(a) test. We also conclude that the documents submitted are related to the EEOC claim and any anticipated litigation. Therefore, the district may withhold from required public disclosure the submitted documents pursuant to section 552.103(a) of the Government Code.

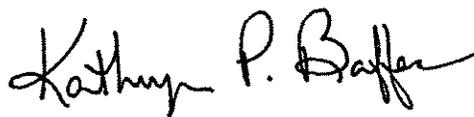
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<sup>1</sup>We note that the requestor seeks information that you have not submitted for our review. We assume that you have provided to the requestor the information that was requested and not submitted for our review. Gov't Code §§ 552.302, 552.303.

We note that when the opposing party in the litigation has seen or had access to any of the information in these records, there is no justification for withholding that information from the requestor pursuant to section 552.103(a). Open Records Decision Nos. 349 (1982), 320 (1982). In addition, 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).

We are resolving this matter with this 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 may 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,



Kathryn P. Baffes  
Assistant Attorney General  
Open Records Division

KPB/rho

Ref: ID# 35248

Enclosures: Submitted documents

cc: Ms. Rita Harlien  
2953 Doug Ford Drive  
El Paso, Texas 79935  
(w/o enclosures)