



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 11, 1995

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

OR95-1394

Dear Mr. Dunbar:

You ask that this office reconsider its determination in Open Records Letter No. 95-557 (1995) ("OR95-557") that certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request for reconsideration was assigned ID# 35212.

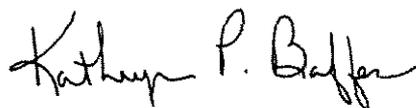
In OR95-557 this office concluded that certain records held by the El Paso Community College District (the "district") did not come under the protection of sections 552.102(b) and 552.111 of the Government Code and that only a limited amount of information might be confidential and therefore excepted from public disclosure under section 552.101. You do not contend that this office erred in its application of these exceptions to the records at issue. However, you have brought to our attention correspondence you submitted to this office prior to the issuance of OR95-557 in which you informed us that the district employee requesting the information had filed an EEOC complaint against the district. You then asserted for the first time the protection of the "litigation exception," section 552.103 of the Government Code.

Although we have confirmed that this office in fact did receive that correspondence during the pendency of OR95-557, your letter unfortunately was not made a part of that particular working file. Assuming the district could not have foreseen the employee's filing of the EEOC complaint at the time you originally sought an open records decision, we conclude that you timely raised section 552.103 with regard to the requested information.

This office has previously determined that the pendency of a complaint before the EEOC indicates a substantial likelihood of litigation and therefore satisfies section 552.103(a). *See* Open Records Decision No. 386 (1983) at 2. Consequently, we conclude that section 552.103(a) authorizes the district to withhold the requested information and hereby withdraw OR 95-557 (1995). Once the prospect of litigation has concluded, however, section 552.103(a) is inapplicable.¹ Attorney General Opinion MW-575 (1982) at 2; Open Records Decision No. 350 (1982) at 3.

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,



Kathryn P. Baffes
Assistant Attorney General
Open Records Division

KPB/RWP/rho

Ref: ID# 35212

¹As noted in Open Records Letter No. 95-557 (1995), some of the requested information may be confidential. The district must not release the confidential information as discussed in Open Records Letter No. 95-557 even after the litigation has concluded. *See* Gov't Code § 552.352.