



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 19, 1995

Mr. Richard D. Monroe
Deputy General Counsel for Operations
Texas Department of Transportation
125 E. 11th Street
Austin, Texas 78701-2483

OR95-1459

Dear Mr. Monroe:

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# 32401.

The Texas Department of Transportation (the "department") received a request for copies of documents reflecting the applicant selected for a particular job posting, the selected applicant's qualifications, and the number of applicants interviewed for the particular position for which the requestor applied but was not selected. You claim that this information is excepted from disclosure pursuant to section 552.103 and have provided copies of the requested documents for our review.

Section 552.103(a) excepts 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

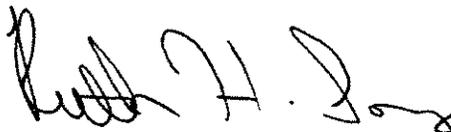
(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

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. You inform us that the requestor has filed a civil rights violation complaint with the department alleging racial discrimination regarding the particular job posting to which the requested records relate. Additionally, the requestor has filed a complaint of racial discrimination against the department with the Equal Employment Opportunity Commission (the "EEOC") regarding a similar position for which she applied but was not accepted. You assert that the information requested relates to the EEOC complaint. We have reviewed the submitted documents and agree with your assertion. This office has held that the pendency of an EEOC claim is sufficient to indicate that litigation relating to the charge(s) in the claim is reasonably anticipated. Open Records Decision Nos. 386 (1983), 336 (1982), 270 (1981). Thus, you may withhold the requested documents pursuant to section 552.103.

We assume, however, that the opposing party to the litigation has not previously had access to the documents. Once information has been obtained by all parties to the litigation, through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). If the opposing parties in the 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(a). Finally, 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 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 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 Records Division

RHS/LMM/rho

Ref.: ID# 32401

Enclosures: Submitted documents

cc: Ms. Pamela Harper
Rt. 3, Box 64B
Atlanta, Texas 75551
(w/o enclosures)

Ms. Janice Salinas
Assistant Attorney General
Transportation Division
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548
(w/o enclosures)