



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 20, 1995

Ms. Lan P. Nguyen
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR95-1506

Dear Ms. Nguyen:

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# 35038.

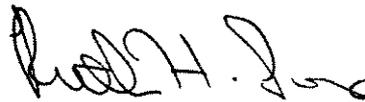
The City of Houston (the "city") was asked to provide the records of an internal investigation to a former city employee. The investigation records at issue concern the former employee's discrimination complaint. You contend that the records at issue are excepted from disclosure pursuant to section 552.103(a) of the Government Code.

Section 552.103(a) provides an exception for information relating to litigation to which the governmental body is or may be a party. To secure the protection of section 552.103(a), a governmental body 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. Information was provided this office showing that the former employee has filed a complaint with the Equal Employment Opportunity Commission ("EEOC"), alleging violation of provisions of the Americans with Disabilities Act, 42 U.S.C. section 12101 *et seq.* This office has held that the pendency of a complaint before the EEOC indicates a substantial likelihood of potential litigation. Open Records Decision Nos. 386 (1983), 336 (1982), 266 (1981). Our review of the records at issue also shows that they are related to the pending litigation for purposes of section 552.103(a).

Although you have shown the applicability of section 552.103(a), you may not withhold from disclosure some of the records at issue. Absent special circumstances, once information has been obtained by all parties to the pending litigation, no section 552.103(a) interest exists with respect to that information. Open Records Decision No. 349 (1982) at 2. Thus, you must release the records the former employee has already had access to. The other records at issue may be withheld under section 552.103(a). We note that the applicability of section 552.103(a) ends when the litigation is concluded. Attorney General Opinion MW-575 (1982) at 2; Open Records Decision Nos. 350 (1982) at 3, 349 (1982) at 2.

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/rho

Ref.: ID# 35038

Enclosures: Submitted documents

cc: The Honorable Gene Green
United States House of Representatives, 29th District
5502 Lawndale
Houston, Texas 77023
(w/o enclosures)