



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 20, 1995

Mr. Richard D. Monroe  
Deputy General Counsel  
Texas Department of Transportation  
Dewitt C. Greer State Highway Bldg.  
125 East 11th Street  
Austin, Texas 78701-2483

OR95-1537

Dear Mr. Monroe:

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# 33537.

The Texas Department of Transportation (the "department") received a request for the employment application of a candidate who was picked for a position, and other "records, documents, letters, and other data" relating to an Equal Employment Opportunity Commission ("EEOC") claim against the department. You contend that the requested information is excepted from disclosure pursuant to section 552.103(a) of the Government Code. To show the applicability of section 552.103(a), a governmental entity must show 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 information supplied shows that the requestor has filed a complaint with the Equal Employment Opportunity Commission ("EEOC") against the department, alleging discrimination on the basis of sex, national origin, and age. That complaint is pending.

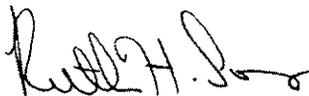
This office has stated that a pending EEOC complaint indicates litigation is reasonably anticipated and therefore meets the first prong of the section 552.103(a) test. Open Records Decision Nos. 386 (1983) at 2, 336 (1982) at 1. You also submitted to this office the winning candidate's employment application. Our review of the application form and the information provided indicates that the form is related to the subject of the anticipated litigation. The department has therefore met both prongs of the section 552.103(a) test as to the employment application form.

You indicate that the other responsive information at issue is already the subject of a pending open records letter, assigned ID# 31423. You may withhold the other information pending issuance of a decision from this office concerning those documents.

Because you have made the requisite showing that litigation is reasonably anticipated and that the application form relates to that anticipated litigation, you may withhold the application form from disclosure pursuant to section 552.103(a). We note that the applicability of section 552.103(a) ends if the other party to the anticipated litigation obtains the information or when the litigation is concluded. Attorney General Opinion MW-575 (1982) at 2; Open Records Decision Nos. 350 at 3, 349 at 2 (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/ch

Ref.: ID# 33537

Enclosures: Submitted documents

cc: Mr. William P. Maher  
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cc: Ms. Tina Coronado  
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