



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 21, 1995

Ms. Brenda Loudermilk  
Office of Special Counsel  
Railroad Commission of Texas  
P.O. Box 12967  
Austin, Texas 78711-2967

OR95-1586

Dear Ms. Loudermilk:

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# 35750.

The Railroad Commission of Texas (the "commission") received two requests from a former employee for information. The first request was for information relating to certain allegations made against the former employee. The second request was for information relating to the reasons the requestor was terminated from his position. You contend the responsive records may be withheld from public disclosure pursuant to section 552.103(a) of the Open Records Act. We agree that the records at issue may be withheld from disclosure.

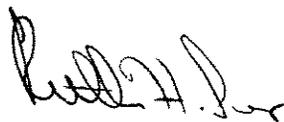
To show that section 552.103(a) is applicable, a governmental body must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex.App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. You indicate that an employee has filed a complaint of racial discrimination with the Texas Commission on Human Rights (the "TCHR"). The TCHR operates as a federal deferral agency under section 706(c) of title VII, 42 U.S.C. § 2000e-5. The Equal Employment Opportunity Commission ("EEOC") defers jurisdiction to the TCHR over complaints alleging employment discrimination. *Id.*

This office has stated that a pending EEOC complaint indicates litigation is reasonably anticipated. Open Records Decision Nos. 386 (1983) at 2, 336 (1982) at 1. By showing that a complaint filed with the TCHR is pending, you have shown that litigation is reasonably anticipated. Our review of the documents at issue shows that they are related to the subject of the anticipated litigation. The commission has therefore met both prongs of the section 552.103(a) test.

Because you have made the requisite showing that litigation is pending or reasonably anticipated and that the requested information relates to that anticipated litigation, you may withhold most of this information under section 552.103(a). However, the applicability of section 552.103 ends if the other party to the anticipated litigation obtains the information or when the anticipated litigation concludes.<sup>1</sup> Attorney General Opinion MW-575 (1982) at 2; Open Records Decision Nos. 350 (1982) at 3, 349 (1982) at 2. We note also that the section 552.103(a) exception is discretionary with the governmental entity asserting the exception. Open Records Decision No. 542 (1990) at 4. The commission may therefore choose to release this information. Gov't Code § 552.007.

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# 35750

Enclosures: Submitted documents

cc: Mr. Max Leschber  
(w/o enclosures)

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<sup>1</sup>You have marked information in one record that you assert is confidential under section 552.101. We agree that this information is confidential under section 552.101 and therefore may not be released even after the litigation has concluded. Since the information otherwise may be withheld under section 552.103(a), we do not address your other arguments for disclosure.