



Office of the Attorney General

State of Texas

April 7, 1997

DAN MORALES
ATTORNEY GENERAL

Mr. Robert A. Schulman
Schulman, Walheim, & Heildelberg
112 East Pecan, Suite 3000
San Antonio, Texas 78205

OR97-0728

Dear Mr. Schulman:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 104919.

The Alamo Community College District (the "district") received a request for Exhibits 10 and 11 which were submitted to the Equal Employment Opportunity Commission concerning a specific complaint. You claim that the requested information is excepted from required public disclosure by section 552.103 of the Government Code. We have considered the exception you claim and have reviewed the documents at issue.

Section 552.103(a) excepts from disclosure 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.

The district has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing 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 district must meet both prongs of this test for information to be excepted under 552.103(a).

In this instance, you state that a discrimination complaint is currently pending before the Equal Employment Opportunity Commission. You have provided this office with a copy of the complaint and supporting documentation. This office has previously held that a pending complaint before the EEOC indicates a substantial likelihood of potential litigation. Open Records Decision Nos. 386 (1983), 336 (1982), 281 (1981). Therefore, the district has met the first prong of the section 552.103(a) test. We also conclude that the requested information is related to the anticipated litigation. Therefore, the district may withhold the requested information from required public disclosure the under section 552.103(a).

Generally, however, 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). Thus, information that has either been obtained from or provided to the opposing party in the anticipated litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed.

Further, 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). However, some of the requested information may be confidential and may not be released even after the litigation has concluded. *See, e.g.*, 20 U.S.C. § 1232g (student education records); Gov't Code § 552.114; Open Records Decision No. 634 (1995). If the department receives a subsequent request for the information at issue, you should re-assert your arguments against disclosure.

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,



Don Ballard
Assistant Attorney General
Open Records Division

JDB/ch

Ref: ID# 104919

Enclosures: Submitted documents

cc: Mr. Salvador Espino
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(w/o enclosures)

