



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

May 7, 1997

Mr. Terry Trimble  
Interim Commissioner  
Texas Department of Human Services  
P.O. Box 149030  
Austin, Texas 78714-9030

OR97-1038

Dear Mr. Trimble:

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# 106013.

The Texas Department of Human Services (the "department") received a request for all records pertaining to the department's investigation into a former employee's claim of sexual harassment. You assert that the requested information is excepted from disclosure under section 552.103 of the Government Code. You have provided this office with the information that is at issue.

Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state is or may be a party. A governmental body 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. A governmental body must meet both prongs of this test for information to be excepted under 552.103(a).

You advise us that the former employee is filing a sexual harassment complaint with the EEOC. Additionally, the requestor states that the requested information is needed to determine whether litigation is appropriate and that it may be used in litigation. We conclude that you have established that litigation is reasonably anticipated and that the documents you submitted are related to reasonably anticipated litigation. *See* Open Records Decision No. 336 (1982). Thus, you may withhold the requested information under section 552.103(a).

We note that, generally, 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). You inform us that information, which you have marked, that has already been provided to the complainant will also be released to the requestor, complainant's attorney. 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).

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,



Yen-Ha Le  
Assistant Attorney General  
Open Records Division

YHL/rho

Ref.: ID# 106013

Enclosures: Submitted documents

cc: Mr. Wade Armonde Way  
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(w/o enclosures)