



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 27, 1997

Ms. Elizabeth Lutton
Senior Attorney
City of Arlington
P.O. Box 231
Arlington, Texas 76004-0231

OR97-1220

Dear Ms. Lutton:

You ask this office to reconsider our decision in Open Records Letter No. 97-0741 (1997). We assigned your request for reconsideration ID# 106999.

The City of Arlington (the "city") received a request for "all documents of rulings or responses to allegations of discrimination by Arlington police officers in reference to the September lieutenant promotional process." In your original request for an opinion, you claimed that the requested information relates to reasonably anticipated litigation and is, therefore, excepted from required public disclosure under section 552.103(a) of the Government Code. In Open Records Letter No. 97-0741 (1997), we concluded section 552.103(a) does not except the information from disclosure because you did not establish that litigation is reasonably anticipated since you failed to submit any evidence showing that there are any complaints pending with the Equal Employment Opportunity Commission (the "EEOC").

You now inform us that you "have received a copy of an EEO complaint filed by . . . one of the police officers who is claiming reverse discrimination" and have submitted the EEOC complaint for our review. Based on this new information, you request reconsideration of our original ruling and assert that section 552.103(a) excepts the requested information from disclosure because the EEOC complaint establishes that litigation is reasonably anticipated.

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

The mere chance of litigation will not trigger section 552.103(a). Open Records Decision No. 452 (1986) at 4 and authorities cited therein. To demonstrate that litigation is reasonably anticipated, the governmental body must furnish *concrete* evidence that litigation involving a specific matter is realistically contemplated and is more than mere conjecture. *Id.* Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 (1986) at 4.

You have submitted information to this office showing that a police officer has filed a reverse discrimination complaint 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 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 the complaint filed with the TCHR is pending, you have shown that litigation is reasonably anticipated. We also conclude that the requested information is related to anticipated litigation for purposes of section 552.103(a) and may be withheld.

We note that once the 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. We also 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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Yen-Ha Le
Assistant Attorney General
Open Records Division

Ref: ID# 106999

Enclosure: Submitted document

cc: Ms. Deanna D. Boyd
Arlington Star-Telegram
11141 W. Abram Street
Arlington, Texas 76004
(w/o enclosure)

