



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 11, 1997

Ms. Jane Kominek
Staff Attorney
Texas Natural Resource
Conservation Commission
Legal Division
P.O. Box 13087
Austin, Texas 78711-3087

OR97-2029

Dear Ms. Kominek:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 108639.

The Texas Natural Resource Conservation Commission (the "commission") received a request for 1) the personnel information of sixteen commission employees, 2) a list of names and work schedules of the commission's Human Resources and Staff Development employees, and 3) the qualifications of Scott Walker for his position as a Trainer V and the job description of this position. You claim that the information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.¹

To show that section 552.103 is applicable, the commission must demonstrate 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. Section 552.103 requires concrete evidence that litigation may ensue. To demonstrate that litigation is reasonably anticipated, the commission must furnish evidence that litigation is realistically contemplated and is more than mere conjecture. Open Records Decision No. 518 (1989) at 5. Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 (1986) at 4.

¹You only submit arguments and information responsive to request categories 1 and 3. Therefore, we assume that you have released the information responsive to category 2 to the requestor.

You have submitted to this office for review a complaint filed with the Equal Employment Opportunity Commission ("EEOC"), in which an employee claims employment discrimination based on national origin, gender, age, and retaliation. 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 commission has met the first prong of the section 552.103(a) test. We also conclude that the requested information relates to the anticipated litigation. Therefore, the commission may withhold from required public disclosure the requested information under section 552.103(a). We note that when the opposing party in the litigation has seen or had access to any of the information in these records, there is no justification for withholding that information from the requestor pursuant to section 552.103(a). Open Records Decision Nos. 349 (1982), 320 (1982). In addition, 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 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

YHL/rho

Ref.: ID# 108639

Enclosures: Submitted documents

cc: Ms. Suzanne White
123 Hill Country Trail
Wimberley, Texas 78676
(w/o enclosures)