



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 1, 1997

Mr. Richard Rafes, J.D., Ph.D.
Vice President for Legal Affairs and General Counsel
University of North Texas
P.O. Box 13426
Denton, Texas 76203-6426

OR97-2208

Dear Mr. Rafes:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 109051.

You explain that the University of North Texas (the "university") received a request for a copy of a specific "file that was made in the Equal Opportunity Office." You do not indicate whether the university has provided other information to the requestor, but you seek to withhold this requested information based on section 552.103 of the Government Code. We have considered the exceptions you claim and have reviewed the documents that you have submitted.

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.

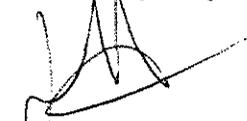
The university has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related 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 university 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 has been filed with the Equal Employment Opportunity Commission ("EEOC"). You have provided this office with a copy of the complaint. This office has previously held that a pending complaint before the EEOC indicates a substantial likelihood of litigation. Open Records Decision Nos. 386 (1983), 336 (1982), 281 (1981). Given the circumstances that you have shown, we find that the university 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 university may withhold from required public disclosure the requested information 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).

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,



Janet I. Monteros
Assistant Attorney General
Open Records Division

JIM/glg

Ref: ID# 109051

Enclosures: Submitted documents

cc: Mr. Roy Brown
2601 Peabody
Dallas, Texas 75215
(w/o enclosures)