



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 5, 1997

Ms. Susan M. Cory
General Counsel
Texas Workers' Compensation Commission
Southfield Building, MS-4D
4000 South IH-35
Austin, Texas 78704-7491

OR97-2444

Dear Ms. Cory:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 110824.

The Texas Workers' Compensation Commission (the "Commission") received a request for five items of information. You inform us that the Commission has released to the requestor request items 1, 2 and 5. You assert that request items 3 and 4 are excepted from required public disclosure based on sections 552.103 and 552.111 of the Government Code.

Section 552.103(a) of the Government Code reads as follows:

(a) Information is excepted from [required public disclosure] if it is 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.

To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 588 (1991). A governmental body has the burden of providing relevant facts and documents to show the applicability of an exception in a particular situation. The test for establishing that section 552.103 applies is a two-prong 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 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.).

You assert that the information relates to reasonably anticipated litigation. You inform us that the requestor filed an internal grievance petition with the Commission's Human Resource Department which contains allegations of harassment and disparate treatment. You have submitted to this office a copy of a grievance report and point out that this report indicates that copies of the report were sent to the Equal Employment Opportunity Commission ("EEOC"), the Texas Commission on Human Rights ("TCHR"), the United States Department of Labor and a local attorney. You state that the "requestor appears to have filed the complaint of harassment and disparate treatment with the EEOC and the TCHR, as well as discussed the complaint with an attorney."

A pending complaint before the EEOC demonstrates that litigation is reasonably anticipated for purposes of section 552.103. *See* Open Records Decision No. 386 (1983). You have not, however, established that a complaint is pending before the EEOC or the TCHR. We therefore conclude that the Commission has not met its burden under section 552.103. The Commission may not withhold the requested information from the requestor based on section 552.103 of the Government Code.

Section 552.111 of the Government Code excepts from required public disclosure:

An interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency.

This exception applies to a governmental body's internal communications consisting of advice, recommendations, or opinions reflecting the policymaking process of the governmental body at issue. *See* Open Records Decision No. 615 (1993). An agency's policymaking functions do not encompass internal administrative and personnel matters. *See id.*

We have reviewed the information at issue. We believe the information concerns personnel matters. Consequently, the Commission may not withhold the information from the requestor based on section 552.111 of the Government Code.

We are resolving this matter with this 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 may 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,



Kay Hastings
Assistant Attorney General
Open Records Division

KHH/rho

Ref.: ID# 110824

Enclosures: Submitted documents

cc: Ms. Rachel Robles
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(w/o enclosures)