



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 9, 1998

Mr. James David Cross
Compliance Officer
Access and Equity Office
Houston Community College System
320 Jackson Hill
P.O. Box 7849
Houston, Texas 77270-7849

OR98-0091

Dear Mr. Cross:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 111971.

The Houston Community College System (the "system") received a request for "copies of the interviews" with members of the History Screening Committee. In response to the request, you have submitted the information which you contend is responsive. You assert that the submitted information is excepted from required public disclosure pursuant to section 552.103 of the Government Code. We have considered the claimed exception and reviewed the submitted information.

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 system 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 system must meet both prongs of this test for information to be excepted under 552.103(a).

In this instance, you state that a 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 system 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, because you have made the requisite showing that litigation is reasonably anticipated and that the requested information relates to that anticipated litigation, you may withhold the requested information under section 552.103(a).

We note, however, 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). Additionally, 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). However, you may not release information made confidential by law, even after the litigation has concluded.

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,

A handwritten signature in black ink that reads "Sam Haddad". The signature is written in a cursive style with a large, sweeping initial "S".

Sam Haddad
Assistant Attorney General
Open Records Division

SH/rho

Ref: ID# 111971

Enclosures: Submitted documents

cc: Ibrahim H. Alsaed, Ph.D.
P.O. Box 460413
Houston, Texas 77056-8413
(w/o enclosures)