



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 27, 1998

Ms. Tracy B. Calabrese
Assistant City Attorney
City of Houston
Legal Department
P.O. Box 1562
Houston, Texas 77251-1562

OR98-0810

Dear Ms. Calabrese:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 114190.

The City of Houston (the "city") received a request for the following information:

1. Any and all audiotapes and/or documentation from the meeting held on February 18, 1997 between Mr. Gordon Fowkes, his supervisor and other city officials;
2. Any and all audiotapes and/or documentation from the "accommodation" meeting held on May 19, 1997 regarding Mr. Gordon Fowkes which was presided over by Mr. Melvin Embry;
3. A copy of the City of Houston Public Works Policy Manual.

You state that you have released some of the requested information. However, you claim that the remaining information is excepted from disclosure under sections 552.103, 552.107, and 552.111 of the Government Code. We have considered the exceptions you claim 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 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 552.103(a).*

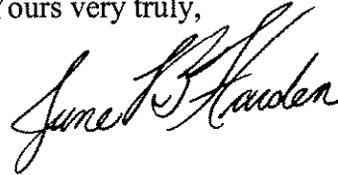
In this instance, you state that a discrimination complaint has been filed with the Equal Employment Opportunity Commission (the "EEOC"). You have provided this office with a copy of the complaint and the notification that the complainant has 90 days to sue the department. This office has previously 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). Given the circumstances that you have shown, we find that the city 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 city may withhold from required public disclosure the requested information under section 552.103(a).

Generally, however, once records have been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to the records. 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). Because we make a determination under section 552.103, we do not consider your additional arguments. However, some of the requested information may be confidential by law and must not be released even after litigation has concluded. If you receive a subsequent request for the information, you should reassert your arguments against disclosure at that time. Gov't Code § 552.352 (distribution of confidential information is criminal offense).

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,

A handwritten signature in black ink, appearing to read "June B. Harden". The signature is written in a cursive style with a large, stylized initial "J".

June B. Harden
Assistant Attorney General
Open Records Division

JBH/alg

Ref.: ID# 114190

Enclosures: Submitted documents

cc: Mr. G. Scott Fiddler
Attorney at Law
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(w/o enclosures)