



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 14, 1998

Ms. Helen K. Bright
Office of General Counsel
The University of Texas System
201 West 7th Street
Austin, Texas 78701-2981

OR98-1663

Dear Ms. Bright:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 116648.

The University of Texas Health Science Center at Houston, (the "center") received a request for the center's Sexual Harassment Board's complete investigation file concerning two named individuals. The requestor represents the victim of the alleged harassment. You indicate that the requestor has access to the formal charge and all correspondence forwarded throughout the investigation. You claim here, however, that the "panel member notes of the interviews conducted during the investigation and the tapes of the interviews" are excepted from required public disclosure by sections 552.101 and 552.103 of the Government Code. You seek a decision from this office concerning the release of the requested information under the Open Records Act. We have considered the exceptions you claim and have reviewed the sample documents at issue.¹

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

¹In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

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 center 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 center 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 Employment Opportunity Commission (EEOC), and that the EEOC has issued a right to sue letter. You have provided this office with evidence of that complaint and other records which demonstrate that the requestor intends to file suit. You explain that the requestor seeks information related to the complaint that is pending before the EEOC. 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 center has met the first prong of the section 552.103(a) test. We also conclude that the information you have submitted is related to the anticipated litigation. Therefore, the center may withhold 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.

Because we make a determination under section 552.103, we do not address your additional argument against disclosure. We note, however, that 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 re-assert 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 upon as a previous

determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Don Ballard
Assistant Attorney General
Open Records Division

JDB/ch

Ref: ID# 116648

Enclosures: Submitted documents

cc: Mr. Hal Roach, Jr.
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(w/o enclosures)