



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 25, 1998

Ms. Diane C. Wetherbee
City Attorney
City of Plano
P.O. Box 860358
Plano, Texas 75086-0358

OR98-2036

Dear Ms. Wetherbee:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 117725.

The City of Plano (the "city") received a request for "any and all documents pertaining to the 1998 investigation into a charge of sexual harassment against city employee Elvenn Richardson." You indicate that you have released some of the requested information. You argue, however, that the remaining requested information is excepted from required public disclosure by sections 552.101, 552.103, and 552.107 of the Government Code. We have considered the exceptions you claim and have reviewed the documents you seek to withhold, submitted as Exhibits K1 - K6.

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 at 4 (1990). The city must meet both prongs of this test for information to be excepted under 552.103(a).

In this instance, you state that complaints concerning the subject of this investigation have been filed with the Texas Commission on Human Rights, the Equal Employment Opportunity Commission ("EEOC"), and with the city. You have provided this office with a copy of the complaints or charges. 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). Consequently, we believe that you have shown that litigation is reasonably anticipated in this matter. You have also demonstrated that the requested material relates to the anticipated litigation. You may withhold the requested information under section 552.103 of the Government Code.

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).

Because we make a determination under section 552.103, we do not address your additional arguments against disclosure at this time. We note, however, that some of the requested information may be confidential by law and must not be released even after litigation has concluded. *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied). 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

Ref: ID# 117725

Enclosures: Submitted documents

cc: Ms. Jennifer Packer
Dallas Morning News
Communications Center
P.O. Box 655237
Dallas, Texas 75265
(w/o enclosures)