



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 25, 1988

Mr. John Steiner
Division Chief
City of Austin
Law Department
P.O. Box 1546
Austin, Texas 78767-1546

OR98-2038

Dear Mr. Steiner:

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# 117992.

The City of Austin (the "city") received an open records request for records pertaining to civil rights complaints that have been filed against the city. You contend that the requested information is excepted from required public disclosure pursuant to sections 552.103 and 552.107(1) of the Government Code.

To secure the protection of section 552.103(a), a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation to which the governmental body is a party. Open Records Decision No. 588 at 1 (1991). The mere chance of litigation will not trigger section 552.103(a). Open Records Decision No. 452 at 4 (1986). To demonstrate that litigation is reasonably anticipated, the governmental body must furnish evidence that litigation involving a specific matter is realistically contemplated and is more than mere conjecture. *Id.*

You have provided this office with a copy of the complaints that were filed with the Equal Employment Opportunity Commission (the "EEOC") and the Texas Commission on Human Rights (the "commission") under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-5. The filing of such complaints constitutes evidence that the likelihood of litigation against the city is more than mere conjecture. *See* Open Records Decision No. 386 (1983). Furthermore, in this instance you have made the requisite showing that the requested information relates to the reasonably anticipated litigation. Based on your representation that these two complaints are currently pending before the EEOC and the

commission, we conclude that the city may withhold most of the requested records at this time pursuant to section 552.103(a).¹

Please note, however, that absent special circumstances, once information has been obtained by all parties to the litigation, either through discovery or otherwise, no section 552.103 interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). In this regard we note that to the extent the complainants have seen or had access to the records pertaining to their respective complaints, there would be no justification for now withholding such information from the requestor pursuant to section 552.103. Accordingly, the city must release these types of documents to the requestor.

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/RWP/bc

Ref.: ID# 117992

Enclosures: Submitted documents

cc: Mr. Garry Simples
7211 Northeast Drive, # 206
Austin, Texas 78723
(w/o enclosures)

¹Because we resolve your request under section 552.103, we need not address at this time the applicability of section 552.107(1).