



# The Attorney General of Texas

May 12, 1981

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An Equal Opportunity/  
Affirmative Action Employer

Honorable Jane H. Macon  
San Antonio City Attorney  
P. O. Box 9066  
San Antonio, Texas 78285

Open Records Decision No. 270

Re: Whether affidavit taken in connection with an E.E.O.C. investigative session is available under the Open Records Act

Dear Ms. Macon:

You have requested our decision under the Open Records Act, article 6252-17a, V.T.C.S., as to whether an affidavit taken in connection with an investigative session of the federal Equal Employment Opportunity Commission [hereinafter EEOC] is available to the public.

In the summer of 1980, a former employee of the city of San Antonio filed with the EEOC a complaint of discrimination against his former employer. On October 2, 1980, the EEOC held an investigative session at which the commission, *inter alia*, took the affidavit of another city employee. On November 13, 1980, the attorney for the discharged employee requested a copy of this affidavit. You suggest that it is excepted from disclosure under sections 3(a)(1), 3(a)(3) and 3(a)(11) of the Open Records Act.

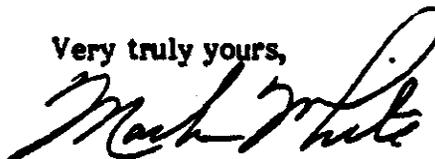
### Section 3(a)(3) excepts:

information relating to litigation of a criminal or civil nature and settlement negotiations, to which the state or political subdivision is, or may be, a party, or to which an officer or employee of the state or political subdivision, as a consequence of his office or employment, is or may be a party, that the attorney general or the respective attorneys of the various political subdivision has determined should be withheld from public inspection.

The complaint in this case is still pending before the EEOC, and the requesting party has also filed a discrimination charge with the Department of Labor. You indicate that there is a reasonable likelihood that suit will be filed, and you have determined that the affidavit should be withheld from disclosure under section 3(a)(3). Since both complaints are presently pending, we believe that such determination is reasonable and that this question is controlled by our decision in Open Records Decision No. 266

(1981). Accordingly, it is our decision that the employee's affidavit at issue here is excepted from disclosure by section 3(a)(3) of the Open Records Act. In view of this determination, we need not address the applicability of section 3(a)(1) or section 3(a)(11).

Very truly yours,



MARK WHITE  
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APPROVED:  
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