Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 22, 1993

Mr. Burton F. Raiford
Commissioner
Texas Departmetn of Human Services
P. O. Box 149030
Austin, Texas 78714-9030

OR93-340

Dear Mr. Raiford:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 19509.

The Texas Department of Human Services (the department) received an open records request for records pertaining to a civil rights complaint made by a departmental employee against the department. You contend that, except for records previously made available to the complainant which you have released to the requestor, the requested records come under the protection of sections 3(a)(3) and 3(a)(11)[1] of the Open Records Act.

To secure the protection of section 3(a)(3), the "litigation" exception, a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation. Open Records Decision Nos. 588 (1991); 452 (1986). The mere chance of litigation will not trigger the 3(a)(3) exception. Open Records Decision Nos. 437 (1986); 331, 328 (1982). 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. Open Records Decision Nos. 437, 331, 328.

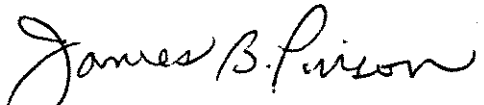
You contend that because the requestor's complaint is currently pending before the Equal Employment Opportunity Commission ("EEOC"), the requested information "relates" to reasonably anticipated litigation and thus may be withheld pursuant to section 3(a)(3). We agree. This office has previously held that the pendency of a complaint

[1]Absent special circumstances, once information has been obtained by all parties to litigation, *e.g.* through discovery or by court order, no section 3(a)(3) interest exists with respect to that information. Open Records Decision Nos. 349, 320 (1982). Because you have released these documents to the requestor, this office assumes that the department does not object to the release of any information contained in those documents that may have otherwise been protected by section 3(a)(11).

before the EEOC indicates a substantial likelihood of litigation and is therefore sufficient to satisfy section 3(a)(3). *See* Open Records Decision No. 386 (1983) and authorities cited therein. The logic of those decisions clearly also applies here. The department may therefore withhold at this time those documents that you have marked as coming under the protection of section 3(a)(3).[2]

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



James B. Pinson
Assistant Attorney General
Opinion Committee

JBP/RWP/lmm

Ref.: ID# 19509

Enclosures: Submitted documents

cc: Ms. Carole Cross
1116 Broadway, Suite C
Lubbock, Texas 79401
(w/o enclosures)

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[2]Because we resolve this issue on other grounds, we need not address your section 3(a)(11) claims.