



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 28, 1994

Ms. Pamela Smith
Staff Attorney
Texas Youth Commission
P.O. Box 4260
Austin, Texas 78765

OR94-092

Dear Ms. Smith:

Mr. Lance Beversdorff, formerly of your office, asked whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code (former V.T.C.S. article 6252-17a).¹ Mr. Beversdorff's request was assigned ID# 23534.

The Texas Youth Commission (the "commission") received an open records request for a tape recording of an interview pertaining to a sexual harassment complaint that a job applicant filed against the commission. You contend that the requested tape recording comes under the protection of section 552.103 of the Open Records Act.

To secure the protection of section 552.103, the "litigation" exception, a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation. Open Records Decision No. 588 (1991) at 1. The mere chance of litigation will not trigger the 552.103 exception. Open Records Decision No. 452 (1986) at 4 and authorities cited therein. 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.*

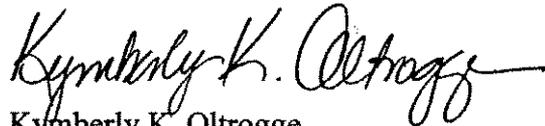
You contend that because the requestor, who filed the harassment complaint against the commission, also has filed a complaint with the Equal Employment

¹The Seventy-third Legislature repealed article 6252-17a, V.T.C.S. Acts 1993, 73d Leg., ch. 268, § 46. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

Opportunity Commission ("EEOC"), the requested information "relates" to reasonably anticipated litigation and thus the commission may withhold the tape recording pursuant to section 552.103. We agree. This office previously has held that the pendency of a complaint before the EEOC indicates a substantial likelihood of litigation and is therefore sufficient to satisfy the requirements of section 552.103. See Open Records Decision No. 386 (1983) at 2 and authorities cited therein. The logic of those decisions clearly also applies here. The department therefore may withhold the requested tape recording at this time pursuant to section 552.103.²

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,



Kimberly K. Oltrogge
Assistant Attorney General
Open Government Section

KKO/RWP/rho

Ref: ID# 23534
ID# 24116

Enclosures: Tape recording

²Absent special circumstances, once all parties to the litigation have obtained information, *e.g.*, through discovery or by court order, no section 552.103 interest exists with respect to that information. Open Records Decision Nos. 349 at 2, 320 (1982) at 1. This office does not believe, however, that the mere fact that the requestor/complainant was present at the tape-recorded meeting constitutes a prior "release" of the information on the recording to the requestor.