



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 24, 1994

Mr. Richard D. Monroe
Deputy General Counsel
Texas Department of Transportation
Dewitt C. Greer State Highway Bldg.
125 East 11th Street
Austin, Texas 78701-2483

OR94-662

Dear Mr. Monroe:

You have asked 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# 28629.

The Texas Department of Transportation (the "department") received a request from an employee for information about his transfer. You contend that these records, a representative sample of which you submitted to this office for review, are excepted from disclosure under section 552.103(a). To show the applicability of the section 552.103(a) exception, a governmental entity must show 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 (1990) at 4.

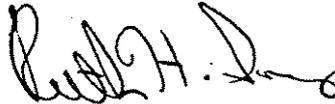
You provided this office a copy of a complaint of discrimination and retaliation filed by the employee with the Equal Employment Opportunity Commission ("EEOC"). This office has held that litigation is reasonably anticipated when an EEOC complaint is pending. Open Records Decision Nos 386 (1983); 336 (1982). You also submitted for review a "representative sample" of documents responsive to the request. A review of the submitted documents indicates that they are related to the anticipated litigation. Since you have shown the applicability of section 552.103(a), the requested documents may be withheld from disclosure.¹

¹In determining that these documents may be withheld, we assume that the representative samples of information you supplied to this office are truly representative of the requested records as a whole. See

In reaching this conclusion, we assume that the requestor, who is also the opposing party in the anticipated litigation, has not previously had access to the records at issue. Absent special circumstances, once information has been obtained by all parties to the litigation, *e.g.*, through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision No. 349 (1982) at 2. If the requestor has already seen or had access to any of the information in these records, there would be no justification for now withholding that information pursuant to section 552.103(a). The applicability of section 552.103(a) also ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982) at 3. We note that since the section 552.103(a) exception is discretionary with the governmental entity asserting the exception, it is within the department's discretion to release this information to the requestor. Gov't Code § 552.007; Open Records Decision No. 542 (1990) at 4.

We are resolving this matter with an 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,



Ruth H. Soucy
Assistant Attorney General
Open Government Section

RHS/rho

Ref.: ID# 28629

Enclosures: Submitted documents

cc: Mr. Willie J. McKinney
c/o Texas Department of Transportation
P.O. Box 150
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(w/o enclosures)

Open Records Decision Nos. 499, 497 (1988) (where requested documents are numerous and repetitive, governmental body can submit representative sample; but if each record contains substantially different information, all must be submitted.) This decision does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than what was submitted to this office.

Ms. Tina Coronado
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