



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

February 20, 1995

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

OR95-070

Dear Commissioner Raiford:

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# 27047.

The Texas Department of Human Services (the "department") received several open records requests from an employee and her attorney in connection with the employee's grievance that she has been a victim of racial discrimination. You contend that certain records or portions thereof may be withheld from the employee pursuant to, *inter alia*, section 552.103(a) of the Government Code. To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 551 (1990).

You have provided this office with a copy of the complaint that the employee filed with the Equal Employment Opportunity Commission under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-5. The filing of such a complaint constitutes evidence that the likelihood of litigation against the department is more than mere conjecture. *See* Open Records Decision No. 386 (1983). In this instance you have made the requisite showing that the requested information relates to reasonably anticipated litigation. The department therefore may withhold the requested records at this time pursuant to section 552.103(a).<sup>1</sup>

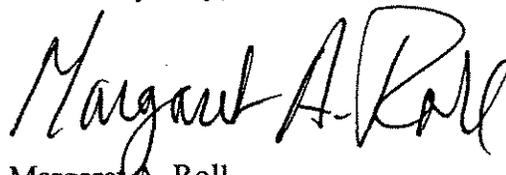
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<sup>1</sup>Because we resolve your request under section 552.103(a), we need not address your claims regarding the applicability of informer's privilege.

In reaching this conclusion, however, we assume that the employee has not previously had access to the records at issue; absent special circumstances, once information has been obtained by all parties to the anticipated litigation, *e.g.*, through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349, 320 (1982). If the employee has 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).<sup>2</sup> We also note that the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

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 under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Margaret A. Roll  
Assistant Attorney General  
Open Government Section

MAR/RWP/rho

Ref.: ID# 27047

Enclosures: Marked documents

cc: Ms. Candice Mallard  
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<sup>2</sup>We have marked the information that reveals on its face the employee has seen or had access to it. You may not withhold this information under section 552.103. In addition, you may not withhold any other information that the employee has seen or had access to.