



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 27, 1995

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

OR95-235

Dear Mr. 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# 30657.

The Texas Department of Human Services (the "department") received an open records request for information that you contend may be withheld from the public pursuant to the Open Records Act, section 552.103(a) of the Government Code. Section 552.103(a) applies to information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

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. 588 (1991). In this instance you have made the requisite showing that the requested information relates to pending

litigation for purposes of section 552.103(a). *See* Open Records Decision No. 386 (1983) (holding litigation exception applicable when complaint before Equal Employment Opportunity Commission is pending). The requested records may therefore be withheld.

We note that if the opposing parties in the anticipated litigation have seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a). Open Records Decision Nos. 349, 320 (1982). The department must determine which documents the opposing party has seen and release those documents. In addition, 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 this 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 may 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,



Kay Guajardo
Assistant Attorney General
Open Government Section

KHG/rho

Ref.: ID# 30657

Enclosures: Submitted documents

cc: Ms. Carolyn E. Jones
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Austin, Texas 78731
(w/o enclosures)