



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

October 5, 1995

Ms. Tamara Armstrong  
Assistant County Attorney  
Travis County  
P.O. Box 1748  
Austin, Texas 78767

OR95-1043

Dear Ms. Armstrong:

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# 36067.

Travis County (the "county") received a request for the names of two persons selected by the county for two positions, their personnel files, and the personnel files of two other county employees. You state that you will release the names of the two persons selected for the positions with the county. You claim that the remainder of the requested information is excepted from disclosure under sections 552.103(a) and 552.101 of the Government Code. We have considered the exceptions you claimed and have reviewed the documents at issue.

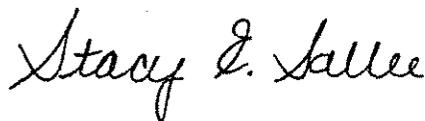
Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state is or may be a party. The county has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing 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. The county must meet both prongs of this test for information to be excepted under section 552.103(a).

You have submitted to this office a complaint the requestor filed with the Equal Employment Opportunity Commission ("EEOC") and a grievance she filed with the county. In these complaints, the requestor claims that she was discriminated against by the county on the basis of age and in retaliation for her reporting three previous instances

of employment discrimination. This office has previously held that a pending complaint before the EEOC indicates a substantial likelihood of potential litigation. Open Records Decision Nos. 386 (1983), 336 (1982), 281 (1981). Therefore, the county has met the first prong of the section 552.103(a) test. We also conclude that the requested documents relate to the anticipated litigation. Therefore, the county may withhold from required public disclosure the requested documents under section 552.103(a). We note that when the opposing party in the litigation has seen or had access to any of the information in these records, there is no justification for withholding that information from the requestor pursuant to section 552.103(a). Open Records Decision Nos. 349 (1982), 320 (1982). 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).<sup>1</sup>

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,



Stacy E. Sallee  
Assistant Attorney General  
Open Records Division

SES/rho

Ref.: ID# 36067

Enclosures: Submitted documents

cc: Ms. Yolanda Ramos  
(w/o enclosures)

---

<sup>1</sup>As we have concluded that the county may withhold the requested documents under section 552.103(a), we need not now address your claimed exception under section 552.101. However, if the county receives a subsequent request for these same documents, we suggest that the county re-submit to this office the documents and the county's arguments as to why section 552.101 excepts the documents from disclosure. This office will consider those arguments at that time.