



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 21, 1995

Mr. Kevin B. Laughlin
First Assistant City Attorney
Office of the City Attorney
City of Midland
P.O. Box 1152
Midland, Texas 79702-1152

OR95-1276

Dear Mr. Laughlin:

You have asked this office to reconsider our decision in Open Records Letter No. 95-996 (1995). We assigned your request for a reconsideration ID# 36263.

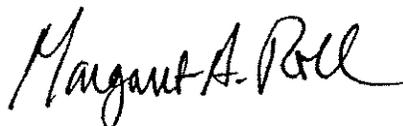
In your original request for a decision from this office, you argued that the requested information is not subject to the Open Records Act and, in the alternative, that section 552.111 of the Government Code exempts the requested information from disclosure. This office disagreed with your arguments in Open Records Letter No. 95-996 (1995) and directed you to release the requested information. In your request for a reconsideration, you raise additional grounds for withholding the requested information: the informer's privilege as it is incorporated into section 552.101 of the Government Code and section 552.103 of the Government Code. Approximately three weeks after you requested reconsideration, you received a Notice of a Charge of Discrimination filed with the Equal Employment Opportunity Commission ("EEOC") by the requestor in this case.

We conclude that you may not withhold the requested information under the informer's privilege. A governmental body may not raise new exceptions after the ten-day deadline contained in section 552.301(a) absent a showing of compelling circumstances. Open Records Decision No. 515 (1988) at 6. Compelling circumstances arise when the requested information is made confidential by law or when a third-party's interests are at stake. Open Records Decision Nos. 625 (1994) at 9, 552 (1990) at 1. The informer's privilege protects the government's interest, and thus, a governmental body may waive the informer's privilege by failing to raise it. See Open Records Decision No. 549 (1990) at 6. Therefore, by itself, the informer's privilege does not constitute a compelling reason to withhold information.

We also conclude that you may not withhold the requested information under section 552.103. To secure the protection of section 552.103(a), a governmental body must demonstrate that the requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding to which the state or political subdivision is or will be a party. Open Records Decision No. 551 (1990) at 5. A pending complaint before the EEOC indicates a substantial likelihood of litigation. Open Records Decision No. 336 (1982) at 1. In this case, you have demonstrated that you reasonably anticipate litigation; you provided this office with a copy of a discrimination complaint filed with the EEOC. You have not, however, demonstrated that the requested information relates to the complaint filed with the EEOC. In the letter accompanying the copy of the complaint, all you say is that the charging party is the requesting party in this matter and that the complaint indicates a likelihood of litigation. You do not indicate the subject matter of the complaint or how the requested information relates to the subject matter of the complaint. Moreover, neither the complaint on its face nor the other correspondence you sent to this office indicates the subject matter of the complaint or how the requested information relates to the complaint. Thus, this office cannot conclude that the requested information relates to the complaint, and you must release all the requested information.

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 Records Division

MAR/rho

Ref.: ID# 36263

Enclosures: Submitted documents

cc: John D. Cox
Robin Cox
(w/o enclosures)