



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 30, 1995

Ms. Sandra C. Joseph
Open Records Counsel/Disclosure Officer
Office of the Comptroller of Public Accounts
LBJ State Office Building
111 East 17th Street
Austin, Texas 78774

OR95-1321

Dear Ms. Joseph:

The Comptroller of Public Accounts (the "comptroller") has asked whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code.¹ That request was assigned ID# 25896.

The comptroller received a request from an attorney for his client's personnel file and information from an investigation involving the client. The comptroller contends that the requested information is excepted from disclosure under section 552.103(a). To show the applicability of section 552.103(a), 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.

Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 (1986) at 4. This office has found that litigation is reasonably anticipated when an attorney demands damages and threatens to sue the governmental entity if the damages are not paid. Open Records Decision No. 551 (1990) at 2. Litigation has also been found to be reasonably anticipated when a former employee

¹The Seventy-fourth Legislature has significantly amended the Open Records Act effective September 1, 1995. See Act of May 29, 1995, H.B. 1718, 74th Leg., R.S. (to be codified at Gov't Code Ch. 552). We do not address in this ruling whether these recent amendments to the Open Records Act will affect requests for this information that are made on or after September 1, 1995.

files a complaint with the Equal Employment Opportunity Commission against the governmental entity and that the complaint is pending. Open Records Decision Nos. 386 (1983) at 2, 336 (1982) at 1. The comptroller has submitted information that indicates litigation may be reasonably anticipated.

We note that the applicability of section 552.103(a) also generally ends when the litigation is concluded. Attorney General Opinion MW-575 (1982) at 2; Open Records Decision Nos. 350 (1982) at 3, 349 (1982) at 2. However, you may not release information that is otherwise confidential even when the litigation concludes.²

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,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/KHG/rho

Ref.: ID# 25896

Enclosures: Submitted documents

cc: Mr. David T. Lopez
Attorney at Law
3900 Montrose Boulevard
Houston, Texas 77006-4959
(w/o enclosures)

²Some of the information in the file may be confidential under common-law privacy. *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied); *see also* Open Records Decision No. 481 (1987) at 2 (information protected under common-law privacy may not be withheld from the individual whose privacy is implicated).