



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

April 19, 1996

Ms. Jennifer Soldano  
Assistant General Counsel  
Texas Department of Transportation  
Dewitt C. Greer State Highway Bldg.  
125 East 11th Street  
Austin, Texas 78701-2483

OR96-0577

Dear Ms. Soldano:

You have asked 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# 39301.

The Texas Department of Transportation (the "department") received a request for information collected by the department concerning complaints of discrimination by certain named employees. You submitted to this office for review a representative sample of the information at issue.<sup>1</sup> You contend that the requested information is excepted from disclosure pursuant to sections 552.103(a), 552.117, 552.107(1), and 552.111 of the Government Code.

---

<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision No. 499 (1988), 497 (1988). Here, we do not address any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Additionally, you submitted to this office information that apparently was sent for informational purposes only. We do not address that information in this ruling.

To show that section 552.103(a) is applicable, a governmental body 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. You have provided information showing that several named employees have filed complaints of racial discrimination with the Texas Commission on Human Rights (the "TCHR"). The TCHR operates as a federal deferral agency under section 706(c) of title VII, 42 U.S.C. § 2000e-5. The Equal Employment Opportunity Commission ("EEOC") defers jurisdiction to the TCHR over complaints alleging employment discrimination. *Id.*

This office has stated that a pending EEOC complaint indicates litigation is reasonably anticipated. Open Records Decision Nos. 386 (1983) at 2, 336 (1982) at 1. By showing that a complaint filed with the TCHR is pending, you have shown that litigation is reasonably anticipated. Our review of the documents at issue shows that they are related to the subject of the anticipated litigation. The department has therefore met both prongs of the section 552.103(a) test.

Because you have made the requisite showing that litigation is pending or reasonably anticipated and that the requested information relates to that anticipated litigation, you may withhold the requested information under section 552.103(a). Generally, the applicability of section 552.103 ends if the other party to the anticipated litigation obtains the information or when the anticipated litigation concludes. 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 made confidential by section 552.117 or other law, even after the litigation has concluded.

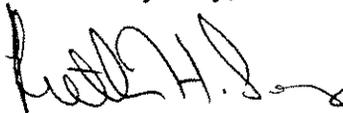
Sections 552.024 and 552.117 provide that a public employee can opt to keep private the employee's home address, home telephone number, social security number, or information that reveals that the individual has family members. The information you submitted for review contains social security numbers, home telephone numbers, and home addresses of some employees. You must withhold the home addresses, home telephone numbers, and social security numbers of those employees who, as of the time of the request for the information, had elected to keep the information private. Open Records Decision Nos. 530 (1989) at 5, 482 (1987) at 4, 455 (1987). Also, social security numbers that were obtained or maintained by a governmental body pursuant to any provision of law, enacted on or after October 1, 1990, are confidential pursuant to section 405(c)(2)(C)(viii) of title 42 of the United States Code.

You have also asserted that three letters are excepted from disclosure pursuant to sections 552.107(1) and 552.111. Section 552.111 excepts from disclosure interagency or intra-agency communications consisting of advice, recommendations, opinions, and other material reflecting the deliberative or policymaking processes of the governmental body.

*See Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ); Open Records Decision No. 615 (1993) at 5. Section 552.111 does not except from disclosure purely factual information. *Id.* Section 552.107(1) protects from disclosure information that reveals client confidences to an attorney or that reveals the attorney's legal advice. *See* Open Records Decision No. 574 (1990). However, section 552.107(1) does not protect purely factual information that is not a client confidence. *Id.* These letters are not excepted from disclosure pursuant to sections 552.107(1) and 552.111.

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 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/rho

Ref.: ID# 39301

Enclosures: Submitted documents

cc: Mr. Russell Wilson II  
3626 North Hall Street, Suite 818  
Dallas, Texas 75219  
(w/o enclosures)