



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 14, 1996

Ms. Inez VanderBurg
Attorney, Legal Services
Texas Department of Mental Health and Mental Retardation
P.O. Box 12668
Austin, Texas 78711-2668

OR96-0702

Dear Ms. VanderBurg:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 39623.

The Texas Department of Mental Health and Mental Retardation (the "department") received a request for information seeking the complete investigation file of a department employee, Patti DiTucci. You have released some information to the requestor but claim that the remaining information is excepted from required public disclosure by sections 552.101 and 552.103 of the Government Code.¹ You have submitted for our review the documents responsive to the request for information.

Section 552.103(a) excepts from disclosure 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.

The department 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

¹ In your initial request for a decision from this office, you also raised an exception under section 552.107. However, as you have not explained how this exception applies to the requested information, we do not consider it here. Gov't Code § 552.301(b)(1); Open Records Decision No. 363 (1983).

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 department must meet both prongs of this test for information to be excepted under 552.103(a).

In this instance, you state that the department conducted an investigation into possible workplace discrimination against an employee. You also state that the department conducted the investigation because of possible violations of the Texas "Whistle-Blower Act." You explain that the investigation and administrative channels to solve the dispute have been completed. The employee in question has hired an attorney who has sent a "formal complaint," and who has explained his client's possible claims against the department. We conclude that litigation is reasonably anticipated and that the information at issue is related to that litigation. You may withhold the requested documents pursuant to section 552.103.

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).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 regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Don Ballard
Assistant Attorney General
Open Records Division

JDB/ch

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² Because we resolve this matter under section 552.103, we need not address your arguments concerning the applicability of section 552.101. We caution you, however, that some of the information provided to this office may also be confidential by law and may not be released even after litigation has concluded. Please note that under section 552.352 of the Government Code, the distribution of confidential information is a criminal offense.

Enclosures: Submitted documents

cc: Mr. Paul M. Hood
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(w/o enclosures)