



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 26, 1996

Mr. Richard Ybarra
Assistant Attorney General/Open Records Coord.
General Counsel Division, MC-018
Office of Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

OR96-1019

Dear Mr. Ybarra:

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# 39936.

The Office of the Attorney General (the "OAG") received an open records request for the "recent investigation into an Equal Employment Opportunity complaint regarding a supervisor at the Corpus Christi District of the Texas Department of Transportation." You contend that the requested records, representative samples of which you have submitted to this office,¹ are excepted from required public disclosure by section 552.103 of the Government Code.

We note at the outset that this office has previously ruled on many of the records at issue in a separate open records ruling issued to the Department of Transportation (the "department"). See Open Records Letter No. 96-0725 (1996) ("OR96-0725") (copy enclosed). Because the OAG holds the records at issue here solely as a result of its representation of the department in the human rights complaint, to the extent that

¹In reaching our conclusion here, 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). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

the OAG holds the same records that were the subject of OR96-0725, this office deems that ruling as a "previous determination" for purposes of section 552.301 of the Government Code and instructs the OAG to either release or withhold those particular records accordingly. In the event, however, that some of the records submitted to this office did not come within the ambit of the open records request to the department, we will now address your section 552.103 claim.

To secure the protection of section 552.103(a), a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation to which the governmental body is a party. Open Records Decision No. 588 (1991) at 1. The mere chance of litigation will not trigger section 552.103(a). Open Records Decision No. 452 (1986) at 4 and authorities cited therein. To demonstrate that litigation is reasonably anticipated, the governmental body must furnish evidence that litigation involving a specific matter is realistically contemplated and is more than mere conjecture. *Id.*

In OR96-0725, this office stated:

After reviewing the submitted documents, we conclude that litigation is reasonably anticipated with respect to the T.C.H.R. complaint and that most of the documents submitted by the department are related to that litigation for the purposes of section 552.103(a). Open Records Decision 336 (1982).

Similarly, we conclude here that the records at issue "relate" to reasonably anticipated litigation for purposes of section 552.103. The OAG therefore may withhold the requested records at this time pursuant to section 552.103(a), with the following exception. It is apparent to this office that, as in OR96-0725, several of the documents at issue have been previously viewed by the individual who filed the human rights complaint. Absent special circumstances, once information has been obtained by all parties to the litigation, either through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). To the extent the complainant has seen or had access to these records, there would be no justification for now withholding such information from the requestor pursuant to section 552.103(a).² The OAG should therefore make a good faith effort to determine what records have been supplied or otherwise previously viewed by the complainant or her attorney, if any. All remaining records may be withheld at this time pursuant to section 552.103.

²Nor would any of the records to which the complainant had prior access come under the protection of any of the other exceptions you claim.

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 other than those previously submitted to this office in connection with OR96-0725. If you have questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/RWP/rho

Ref.: ID# 39936

Enclosures: Open Records Letter No. 96-0725 (1996)
Submitted documents

cc: Ms. Anna M. Tinsley
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(w/o enclosures)