



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 15, 1996

Mr. Kevin McCalla
Director, Legal Division
Texas Natural Resource
Conservation Commission
P.O. Box 13087
Austin, Texas 78711-3087

OR96-1142

Dear Mr. McCalla:

You have asked whether the information at issue is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 100522.

The Texas Natural Resource Conservation Commission (the "TNRCC") received a request for "Workforce Utilization Analysis" reports, which show percentages based upon race and gender of the TNRCC workforce as compared to the available workforce and state population. You assert that the information at issue is excepted from disclosure pursuant to section 552.103(a). 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 the employee requesting the records has filed a complaint of sexual 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.

You have shown the applicability of section 552.103(a). We note, however, that if the requested information is issued in a public report or otherwise made available to the public generally, you must also provide the information to this requestor. Gov't Code § 552.007 (information made public may not be selectively withheld). We also note that section 552.103(a) is not generally applicable if the other party to the anticipated litigation has obtained or seen 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.

This ruling is limited to the particular records at issue under the facts presented to us in this request and may 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/ch

Ref.: ID# 100522

Enclosures: Submitted documents