



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 10, 1996

Ms. Joanne Wright
Associate General Counsel
Texas Department of Transportation
DeWitt C. Greer State Highway Bldg.
125 E. 11th Street
Austin, Texas 78701-2483

OR96-1844

Dear Ms. Wright:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 101867.

The Texas Department of Transportation (the "department") received a request for a copy of the letter that Ms. Linda Punecky sent to Mr. Gary Trietsch in which Ms. Punecky accused the requestor of misusing state property. You believe that the letter, a copy of which you have submitted to this office for review, is excepted from disclosure under section 552.103 of the Government Code.

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 governmental body has the burden of providing relevant facts and documents to show that section 552.103(a) is applicable in a particular situation. In order to meet this burden, the 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 state that Ms. Punecky has filed a complaint of discrimination against the department with the Texas Commission on Human Rights (the "TCHR"). This office has ruled that a pending complaint before the Equal Employment Opportunity Commission (the "EEOC") indicates a substantial likelihood of litigation relating to the complaint. Open Records Decision Nos. 386 (1983) at 2, 336 (1982) at 1. The TCHR operates as a federal deferral agency under section 706(c) of title VII, 42 U.S.C. § 2000e-5. The EEOC defers jurisdiction over complaints alleging employment discrimination to the TCHR. *Id.* By demonstrating that a TCHR complaint is pending against the department, you have shown that the department reasonably anticipates litigation relating to the complaint. You have also shown that the requested letter relates to this reasonably anticipated litigation.

However, once all parties to litigation have gained access to the information at issue under section 552.103(a), through discovery or otherwise, section 552.103(a) is no longer applicable to that information. Open Records Decisions Nos. 551 (1990), 454 (1986). Here, the department's opposing party is the author of the requested letter, and, therefore, section 552.103(a) is not applicable to the letter. Accordingly, the department must release the letter to the requestor.

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 any questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref: ID# 101867

Enclosures: Submitted documents

cc: Ms. Jolee Aylesworth
P.O. Box 1386
Houston, Texas 77251-1386
(w/o enclosures)