



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 2, 1997

Mr. James G. Nolan
Supervising Attorney
Legal Department - Information Release
Texas Workforce Commission
101 E. 15th Street
Austin, Texas 78748

OR97-1272

Dear Mr. Nolan:

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# 106245.

The Texas Workforce Commission (the "commission") received an open records request for "any and all documents, records, testimonies given by Richard Persky and any and all other employees that participated in the investigation concerning a Sexual Harassment complaint filed on 9-13-98[sic]." You have reviewed the request and responsive documents, and you seek to withhold these documents from the public pursuant to sections 552.103 and 552.107 of the Government Code.

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 a certain named person has filed a complaint 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.*

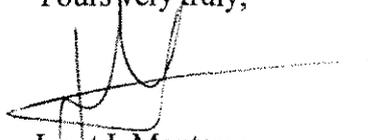
This office has stated that a pending EEOC complaint indicates litigation is reasonably anticipated. Open Records Decision Nos. 386 (1983) at 2, 336 (1982) at 1. By showing that a complaint filed with the TCHR is pending, you have shown that litigation is reasonably anticipated. Our review of the documents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

the subject of the anticipated litigation. The commission 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).¹ 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). 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) a 2; Open Records Decision Nos. 350 (1982) at 3, 349 (1982) at 2. We note, however, that some of the requested information may be confidential by law and must not be released. *See Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied).

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,



Janet I. Monteros
Assistant Attorney General
Open Records Division

JIM/glg

Ref.: ID# 106245

Enclosures: Submitted documents

¹As we resolve your request under section 552.103(a), we need not address your other claimed exception.