



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

September 5, 1997

Ms. Susan M. Cory  
General Counsel  
Texas Workers' Compensation Commission  
Southfield Building, MS-4D  
4000 South IH-35  
Austin, Texas 78704-7491

OR97-1994

Dear Ms. Cory:

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# 108511.

The Texas Workers' Compensation Commission (the "commission") received three requests from the same requestor for documents from the requestor's personnel file and documents relating to the letter of reprimand he received. You object to those categories of the request which would require the commission to create information that does not exist or to answer general inquiries. You contend that the responsive documents are excepted from disclosure pursuant to sections 552.101, 552.103, 552.107, 552.108, and 552.111 of the Government Code. We have considered the exception, you claim and have reviewed the documents at issue.

As for the requested information that you state does not exist, we note that the Open Records Act does not require a governmental body to obtain or create new information in order to comply with a request for information. Open Records Decision No. 534 (1989). Additionally, the Open Records Act does not require a governmental body to perform legal research or answer a requestor's general inquiries. Open Records Decision Nos. 563 (1990), 555 (1990). However, a governmental body must make a good faith effort to relate a request to information which it holds and should advise the requestor of the types of information available. Open Records Decision No. 561 (1990).

Section 552.103(a) of the Government Code 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 the requestor has filed a complaint of discrimination against the commission 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 commission, you have shown that the commission reasonably anticipates litigation relating to the complaint. It is apparent from our review of the submitted documents that they relate to the anticipated litigation. Accordingly, section 552.103(a) is applicable to the documents.

We note, however, that several of the documents at issue were submitted to the commission by the requestor or were sent to the requestor by the commission. Once the opposing party in the anticipated litigation has seen or had access to documents at issue under section 552.103(a), there is no justification for withholding those documents from disclosure pursuant to section 552.103(a). Open Records Decision Nos. 349 (1982), 320 (1982). Therefore, the commission may only withhold from disclosure those documents to which the opposing party, in this case the requestor, has not previously had access.<sup>1</sup> In addition, the applicability of section 552.103(a) ends once the litigation has concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

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<sup>1</sup>We note that in this case, the documents to which the requestor has previously had access would not be protected from disclosure under any of the other exceptions you have claimed.

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,

A handwritten signature in black ink that reads "Karen Hattaway". The signature is written in a cursive style with a large, flowing "K" and "H".

Karen E. Hattaway  
Assistant Attorney General  
Open Records Division

KEH/rho

Ref: ID# 108511

Enclosures: Submitted documents

cc: Mr. James H. Adam  
P.O. Box 265  
Cedar Creek, Texas 78612  
(w/o enclosures)

