



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

February 2, 1998

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

OR98-0322

Dear Ms. Wright:

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# 112473.

The Texas Department of Transportation (the "department") received a request for information relating to the denial of a former employee's application for appraiser as well as documentation relating to other appraiser applications processed during the past two years. You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

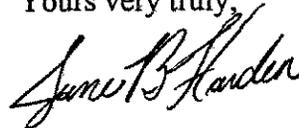
Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state is or may be a party. The commission has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing 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. The department must meet both prongs of this test for information to be excepted under section 552.103(a).

You have submitted evidence that Ms. Linda Punecky, a former employee of the department, has filed a complaint with the Equal Employment Opportunity Commission and, subsequently, a lawsuit alleging sex discrimination and retaliatory discharge. We have reviewed the submitted documents and conclude that they are related to the pending litigations. Therefore, the department may withhold the documents under section 552.103(a). We note, however, that when the opposing party in the litigation has seen or had

access to any of the information in these records, there is no justification for withholding that information from the requestor pursuant to section 552.103(a). Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed, *e.g.*, correspondence from the opposing party, and correspondence sent to the opposing party. In addition, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



June B. Harden  
Assistant Attorney General  
Open Records Division

JBH/alg

Ref.: ID# 112473

Enclosures: Submitted documents

cc: Mr. Blair Brininger  
Attorney at Law  
13105 Northwest Freeway, Suite 740  
Houston, Texas 77040  
(w/o enclosures)