



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 4, 1998

Mr. S. Anthony Safi
Mounce, Green, Myers, Safi & Galatzan
P.O. Box 1977
El Paso, Texas 79950-1977

OR98-0348

Dear Mr. Safi:

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# 113071.

The El Paso Independent School District (the "district"), which you represent, received a request for "Jim Nardone's letter of findings" concerning the requestor. You claim that the requested information is excepted from disclosure under sections 552.103 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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 the requestor filed complaint number 361-97-1102 with the Equal Employment Opportunity Commission ("EEOC") against the district. This office has ruled that a pending complaint before the EEOC indicates a substantial likelihood of litigation relating to the complaint. Open Records Decision Nos. 386 (1983) at 2, 336 (1982) at 1. Although the requestor has stated that she intends to drop her EEOC charge, you claim that the district "has not received official notification from the EEOC to this effect." Based on your representations, we find that the EEOC complaint is still pending against the district. Thus, you have shown that the district reasonably anticipates litigation relating to the complaint. You have also shown that the requested documents relate to the anticipated litigation. Accordingly, section 552.103(a) excepts the requested information from disclosure.

Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the anticipated litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. Further, 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).¹

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,



Vickie Prehoditch
Assistant Attorney General
Open Records Division

VDP/glg

Ref.: ID# 113071

Enclosures: Submitted documents

¹As we resolve this matter under section 552.103, we do not address the applicability of section 552.111 at this time.

cc: Ms. Emily Perry
741 Castile
El Paso, Texas 79912
(w/o enclosures)