



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 20, 1998

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

OR98-0498

Dear Ms. Soldano:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 113049.

The Texas Department of Transportation (the "department") received a request for "[a]ll questions and responses of all witness statements that were not provided in any previous request made by me concerning Complaint No. 98HQ-A-C435," "[a]ll memorandums and conference outcomes pertaining to above case," and "the complete interviewing and hiring packet for Human Resources Officer position for the Houston District . . ." With regard to the interviewing and hiring packet, you state that this information is for the most part identical to information previously requested from this requestor, and which was the subject of another ruling from this office, Identification No. 112389-97. This ruling was issued by this office as OR98-0365 (1998). As you assert that the records ruled upon in OR98-0365 (1998) are representative of the interviewing and hiring packet, we conclude you may rely on OR98-0365 (1998) to withhold that information from disclosure.¹ You claim that the remaining requested information is excepted from required public disclosure by section 552.103 of the Government Code. We have considered the exception you claim and have reviewed the documents submitted.

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

¹We assume that the records ruled upon in OR98-0365 (1998) are truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that ruled upon in OR98-0365 (1998).

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 department 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 552.103(a).

You explain that the request seeks information related to an ongoing complaint before the Equal Employment Opportunity Commission ("EEOC"), Complaint No. 330970051. This office has previously held that a pending complaint before the EEOC indicates a substantial likelihood of potential litigation. Open Records Decision Nos. 386 (1983), 336 (1982), 281 (1981). Given the circumstances that you have shown, we find that the department has met the first prong of the section 552.103(a) test. We also conclude that the information you have submitted is related to the anticipated litigation. Therefore, the department may withhold the requested information under section 552.103(a).

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).

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,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/ch

Ref: ID# 113049

Enclosures: Submitted documents

cc: Ms. Mary L. Curtis
P.O. Box 149
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(w/o enclosures)