



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 7, 1998

Mr. Ron M. Pigott
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR98-1165

Dear Mr. Pigott:

You ask this office to reconsider our ruling in Open Records Letter No. 98-0712 (1998). Your request for reconsideration was assigned ID# 115546.

The Texas Department of Public Safety (the "department") received a request for all documentation submitted to support the two C-1 investigations involving the requestor. In Open Records Letter No. 98-0712 (1998), this office concluded that the department could not withhold the requested information under section 552.103 of the Government Code. Because you did not submit the discrimination complaint as requested by this office's February 6, 1998 letter facsimile, we concluded that we did not have sufficient information to determine whether the requested information related to anticipated litigation. You explain that, based on your original letter requesting a ruling, you thought the discrimination complaint was attached to the original letter. Furthermore, you state that you never received the facsimile from our office requesting the additional information.

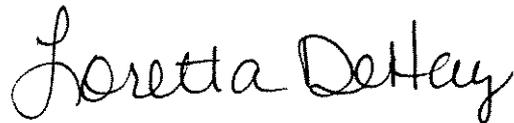
We have reviewed your original letter and the facsimile requesting additional information. When sending correspondence by facsimile, it is the general practice of this office to attach a record acknowledging receipt of the facsimile by the receiving line. There is no such acknowledgment that the department's facsimile machine actually received the transmission. Therefore, we will give you the benefit of the doubt and assume for purposes of this ruling that you did not receive the request for additional information. You have now provided the discrimination complaint for our review.

This office has stated that a pending Equal Employment Opportunity Commission ("EEOC") complaint indicates that litigation is reasonably anticipated. Open Records Decision Nos. 386 (1983) at 2, 336 (1982) at 1. We have reviewed the complaint and agree with your assertion that the requested records relate to the anticipated litigation. You may, therefore, withhold the requested records under section 552.103 of the Government Code.

In reaching this conclusion, however, we assume that the opposing party to the anticipated litigation has not previously had access to the records at issue; absent special circumstances, once information has been obtained by all parties to the litigation no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). We also note that 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).

Open Records Letter No. 98-0712 (1998) is overruled to the extent it conflicts with this ruling. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay
Deputy Chief
Open Records Division

LRD/rho

Ref.: ID# 115546

Enclosures: Submitted documents

cc: Ms. Vanessa R. Merida
2945 Eckert St.
Austin, Texas 78722
(w/o enclosures)