



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 7, 1998

Mr. Hugh W. Davis, Jr.
Assistant City Attorney
The City of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102-6311

OR98-1170

Dear Mr. Davis:

You ask this office to reconsider our ruling in Open Records Letter No. 98-0823 (1998). Your request for reconsideration was assigned ID#116188.

The City of Fort Worth (the "city") received a request for a specific letter relating to the termination of the city's former assistant director of public events. In Open Records Letter No. 98-0304 (1998), this office concluded that the city could not withhold the requested information under section 552.103 of the Government Code. You re-urge your original arguments for withholding the information and also explain that an Equal Employment Opportunity Commission ("EEOC") claim was filed regarding this matter. You did not, however, notify this office that the EEOC claim was filed against the city while the request for a ruling was pending in our office.

We have reviewed your original arguments for withholding the information under section 552.103, as well as the additional information you have provided regarding this matter. With respect to your assertion on reconsideration that section 552.103 applies because an EEOC claim was filed, a governmental body is required to timely notify this office of any changed circumstances regarding its claims of anticipated litigation. *See* Open Records Decision No. 638 (1996). From the documentation provided for our review, it appears that the Employment Opportunity Commission notified the city of the claim on March 3, 1998. The ruling was issued on March 30, 1998. You did not timely notify our office of any change in circumstances regarding your claims of anticipated litigation. We, therefore, affirm Open Records Letter No. 97-0823 (1998) regarding the applicability of section 552.103 of the Government Code.¹

¹We also note that section 552.103 does not generally apply once the opposing party to the anticipated or pending litigation has seen or had access to the information. Open Records Decision Nos. 349 (1982), 320 (1982). In this instance, an attorney for the opposing party to the EEOC claim wrote the letter to the city.

We note, however, that certain information in the letter must be withheld on the basis of common-law privacy under section 552.101 of the Government Code. The court in *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied), concluded that common-law privacy protects the identities of victims of alleged sexual harassment; but there is a legitimate public interest in releasing certain factual details regarding the allegations. The *Ellen* decision controls the release of certain information contained in the letter you have submitted for our review. There is a legitimate public interest in most of the information contained in the letter regarding the allegations of sexual harassment. However, the identities of the victims of the alleged sexual harassment are excepted from disclosure under common-law privacy as applied in *Ellen*. We have marked the type of information that must be withheld. The remaining information in the letter must be released.

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# 116188

Enclosures: Marked documents

cc: Ms. Kristin N. Sullivan
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(w/o enclosures)