



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

June 29, 1998

Mr. Kevin McCalla  
Director, Legal Division  
Texas Natural Resource  
Conservation Commission  
P.O. Box 13087  
Austin, Texas 78711-3087

OR98-1554

Dear Mr. McCalla:

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# 116206.

The Texas Natural Resource Conservation Commission (the "commission") received an open records request from a commission employee for certain information pertaining to a job posting for which the employee applied but was not hired. You contend that the requested records may be withheld from the employee pursuant to the "litigation exception," section 552.103(a) of the Government Code. To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 551 (1990).

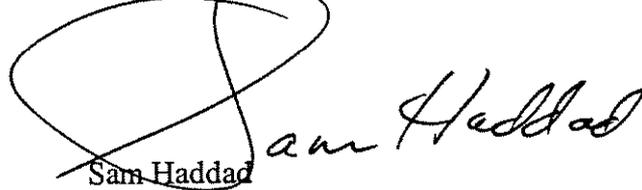
You have provided this office with a copy of the complaint that the commission employee filed with the Texas Commission on Human Rights under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-5. The filing of such a complaint constitutes evidence that the likelihood of litigation against the commission is more than mere conjecture. See Open Records Decision No. 386 (1983). Furthermore, in this instance you have made the requisite showing that the requested information relates to the reasonably anticipated litigation. The commission therefore may withhold the requested records at this time pursuant to section 552.103(a).<sup>1</sup>

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<sup>1</sup>In reaching this conclusion, however, we assume that the requestor has not previously had access to the records at issue; absent special circumstances, once information has been obtained by all parties to the anticipated litigation, e.g., through discovery or otherwise, 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 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,

A handwritten signature in black ink, appearing to read "Sam Haddad". The signature is written in a cursive style and is positioned to the right of the typed name "Sam Haddad".

Sam Haddad  
Assistant Attorney General  
Open Records Division

SH/RWP/rho

Ref.: ID# 116206

Enclosures: Submitted documents

cc: Mr. Charles Palmer  
2512 Madison  
Rosenberg, Texas 77471  
(w/o enclosures)