



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

October 2, 1998

Mr. Helmut Talton  
Associate General Counsel  
Texas Department of Transportation  
125 E. 11<sup>th</sup> Street  
Austin, Texas 78701

OR98-2354

Dear Mr. Talton:

You ask this office to reconsider our decision in Open Records Letter No. 98-1665 (1998). Your request for reconsideration was assigned ID# 118572.

Open Records Letter No. 98-1665, which involved a request for "a copy of the Civil Right Report of Investigation that was completed by the Civil Rights Division out of Houston, Texas," determined that the Texas Department of Transportation (the "department") must withhold from disclosure portions of the requested information based on section 552.101 of the Government Code in conjunction with the common-law right to privacy and section 552.117 of the Government Code. You state that the department received a copy of the ruling on July 15, 1998. You now assert that the report in its entirety is excepted from disclosure based on section 552.103 of the Government Code because on July 21, 1998, the department received notice of a complaint alleging sexual harassment against the department filed with the United States Equal Employment Opportunity Commission ("EEOC") on July 24, 1998. Your letter to this office requesting reconsideration is also dated July 21, 1998.

Section 552.103 excepts from required public disclosure information that relates to pending or reasonably anticipated litigation to which the governmental body is a party. Prior decisions of this office have held that the pendency of a complaint before the EEOC indicates a substantial likelihood of litigation for purposes of section 552.103. *See, e.g.* Open Records Decision No. 386 (1983). We believe the requested information relates to the pending EEOC claim. However, the department has not raised section 552.103 within the statutory ten-day deadline. Gov't Code § 552.301. When an exception is not timely raised, the information is presumed to be public. *Id.* § 552.302. Only a compelling demonstration of a need to withhold the information can overcome a presumption of openness. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.—Austin 1990, no writ).

Based on the specific facts presented in this case, we find that the department has demonstrated a compelling reason to withhold the information at issue. Accordingly, we conclude that the department may withhold the requested information from public disclosure based on section 552.103 of the Government Code.<sup>1</sup> Open Records Letter No. 98-1665 is overruled.

If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Hastings  
Deputy Chief  
Open Records Division

KHH/ch

Ref.: ID# 118572

Enclosures: Submitted documents

cc: Ms. Sandra York  
1061 N. Crockett  
San Benito, Texas 78585  
(w/o enclosures)

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<sup>1</sup>If the opposing party in the litigation has seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a). Open Records Decision Nos. 349 (1982), 320 (1982). In addition, the applicability of section 552.103(a) ends once the litigation is concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).