

January 7, 1999



OFFICE OF THE
ATTORNEY GENERAL
STATE OF TEXAS

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JOHN CORNYN
Attorney General

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Mr. William W. Bell
City Attorney
City of Brownwood
P.O. Box 1726
Brownwood, Texas 76801

OR99-0034

Dear Mr. Bell:

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# 121156.

The City of Brownwood (the "city") received an open records request for twelve categories of information pertaining to an employee dispute. You state that most of the requested documents to which the city has a right of access will be released to the requestor. You seek to withhold, however, a twelve page investigation report that you prepared and submitted to the city council, city manager, and city attorney. You contend that this document is excepted from required public disclosure pursuant to, *inter alia*, section 552.103 of the Government Code.

To secure the protection of section 552.103, a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation to which the governmental body is a party. Open Records Decision No. 588 at 1 (1991). The mere chance of litigation will not trigger section 552.103(a). Open Records Decision No. 452 at 4 (1986). To demonstrate that litigation is reasonably anticipated, the governmental body must furnish evidence that litigation involving a specific matter is realistically contemplated and is more than mere conjecture. *Id.*

You have provided this office with a copy of the notice of complaint that the city received from the Texas Commission on Human Rights (the "commission") under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-5. The filing of a civil rights complaint with the commission constitutes evidence that the likelihood

of litigation against the city 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. We therefore conclude that the city may withhold the requested report at this time pursuant to section 552.103.¹

Please note, however, that absent special circumstances, once information has been obtained by all parties to the litigation, either through discovery or otherwise, no section 552.103 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 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,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/RWP/ch

Ref.: ID# 121156

Enclosures: Submitted documents

cc: Ms. Sandra Randle Fordjour
P.O. Box 171888
Arlington, Texas 76003-1888
(w/o enclosures)

¹Because we resolve your request under section 552.103, we need not address the applicability of the other exceptions you raise.