



September 9, 1999

Ms. Tenley A. Aldredge
Assistant County Attorney
County of Travis
314 W. 11th, Suite 300
Austin, Texas 78767

OR99-2510

Dear Ms. Aldredge:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 127294.

Travis County (the "county") received a request from Mr. John B. Kinsey for a copy of his personnel file. You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the documents at issue.

Section 552.103(a) of the Government Code, the "litigation exception," excepts from disclosure information relating to litigation to which the state is or may be a party. The county has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.--Austin 1997, no pet.); *Heard v Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). The county must meet both prongs of this test for information to be excepted under section 552.103(a).

You have provided information showing that Mr. Kinsey has filed a complaint of racial discrimination with the Equal Employment Opportunity Commission ("EEOC"). This office has stated that a pending EEOC complaint indicates litigation is reasonably anticipated.

Open Records Decision Nos. 386 at 2 (1983), 336 at 1 (1982). In this case, we agree that the county reasonably anticipates litigation against Mr. Kinsey, and that the requested documents relate to the reasonably anticipated litigation.

However, information that has either been obtained from or provided to the opposing party in the anticipated litigation, through discovery or otherwise, is not excepted from disclosure under section 552.103(a). Open Records Decision Nos. 349 (1982), 320 (1982). The opposing party in the anticipated litigation, Mr. Kinsey, has previously had access to many of the documents in his personnel file. The county may not withhold such documents from disclosure under section 552.103(a). The county may withhold from disclosure under section 552.103(a) any documents to which Mr. Kinsey has not previously had access. We 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).

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.

Sincerely,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref: ID# 127294

Encl. Submitted documents

cc: Mr. John B. Kinsey
108 Bosc Court
Thurmont, Maryland 21788-3222
(w/o enclosures)