



August 3, 2000

Ms. Janice Marie Wilson
Associate General Counsel
Texas Department of Transportation
P.O. Box 2293
Austin, Texas 78768

OR2000-2945

Dear Ms. Wilson:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 137741.

The Texas Department of Transportation (the "department") received a request for various information concerning the department's investigation of a particular employee's discrimination charge. The requestor identifies the department's investigation of the charge as Civil Rights Case No. 00D-M-C652. You inform us that the department will release to the requestor the formal investigative report of this matter. However, you claim that the requested information is excepted from disclosure under sections 552.101, 552.103, and 552.107(1) of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.--Austin 1997, no pet.); Open Records Decision No. 588 (1991) at 1. To show the applicability of section 552.103, a governmental body must show that the litigation was pending or reasonably anticipated on the date that the requestor applies for the information. Gov't Code § 552.103(c).

You argue that the requested information relates to reasonably anticipated litigation. You inform us that the complainant has filed a complaint with the Texas Commission on Human Rights ("TCHR"). The pendency of a complaint before the TCHR indicates a substantial likelihood of litigation. *Cf.* Open Records Decision No. 386 (1983) (pending EEOC

complaint established reasonably anticipated litigation). Furthermore, the requested information relates to the pending TCHR complaint. Accordingly, in this instance, we conclude that you have made the requisite showing that the requested information relates to reasonably anticipated litigation for purposes of section 552.103. The department may withhold the requested records from the requestor based on section 552.103, except as noted below.

Absent special circumstances, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103 interest exists with respect to that information. Open Records Decision Nos. 349, 320 (1982). We have marked portions of the information which the potential opposing party apparently has seen or submitted to the department. There is no justification for now withholding that information from the requestor pursuant to section 552.103. 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).

In light of our conclusion under section 552.103, we need not address your other claimed exceptions. In addition, as you presented arguments against disclosure of the requested information based on section 552.022 of the Government Code,¹ we find section 552.022 inapplicable to the information at issue.

In summary, the department may withhold the requested information from the requestor based on section 552.103, except to the extent the requestor has had access to the information, and until such time as the litigation is concluded.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling.

¹Section 552.022 makes public certain enumerated categories of information regardless of the applicability of section 552.103. *See* Gov't Code § 552.022 (listing 18 categories of information generally deemed public unless confidential by other law).

general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Kay Hastings
Assistant Attorney General
Open Records Division

KHG/pr

Ref: ID# 137741

Encl. Submitted documents

cc: Mr. David Garcia
411 North Avenue E
Olney, Texas 76374
(w/o enclosures)