



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 24, 2010

Mr. William Christian
Graves Dougherty Hearon & Moody, P.C.
P.O. Box 98
Austin, Texas 78767

OR2010-02762

Dear Mr. Christian:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 371157.

The Del Mar College District (the "district"), which you represent, received a request for the information presented to and used by hiring committees that relates to positions for which the requestor has applied. You claim the submitted information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

Section 552.103 provides in part:

- (a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

¹We assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

....

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103(a), (c). The district 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 on the date the department received the request for information, and (2) the information at issue is related to that litigation. *Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (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 district must meet both prongs of this test for information to be excepted under section 552.103(a).

You state, and provide documentation showing, the requestor filed a complaint with the Equal Employment Opportunity Commission (“EEOC”) against the district, alleging discrimination based on age. You represent this complaint was pending on the date the request was received by the district. This office has stated that a pending EEOC complaint indicates litigation is reasonably anticipated. *See* Open Records Decision Nos. 386 at 2 (1983), 336 at 1 (1982). Based on your representations and our review of the submitted EEOC complaint, we agree the district reasonably anticipated litigation on the date it received the present request for information. We also agree the submitted information is related to the EEOC complaint for purposes of section 552.103.

However, the purpose of section 552.103 is to enable a governmental body to protect its position in litigation by forcing parties seeking information relating to the litigation to obtain such information through discovery procedures. *See* Open Records Decision No. 551 at 4-5 (1990). Thus, once information is obtained from or provided to all the opposing parties in the anticipated litigation, there is no interest in withholding that information under section 552.103. *See* Open Records Decision Nos. 349 (1982), 320 (1982). The submitted information includes the requestor’s application documents that were provided to the district by the requestor. Because the requestor is the district’s opposing party in the pending EEOC complaint, these records, which we have marked, may not be withheld under section 552.103. As you raise no other exceptions to their disclosure, the marked documents must be released.² The district may withhold the remaining information under

²Some of the information subject to release would ordinarily be protected by exceptions and laws enacted to protect a person’s right to privacy. However, because the requestor in this instance has a right of access her own information that otherwise would be protected by privacy principles, if the district receives

section 552.103 of the Government Code. We note that the applicability of section 552.103 ends once the related litigation concludes. *See* Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Bob Davis
Assistant Attorney General
Open Records Division

RSD/cc

Ref: ID# 371157

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

another request for this particular information from a different requestor, the district should again seek a decision from this office. *See generally* Gov't Code § 552.023(b) (person or person's authorized representative has a special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person's privacy interests).