



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 25, 1995

Mr. W. O. Schultz II
Associate General Counsel
Office of General Counsel
University of Texas System
201 West Seventh Street
Austin, Texas 78701-2981

OR95-209

Dear Mr. Schultz:

You have asked 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# 31893.

The University of Texas System ("U.T.") received a request for information concerning "the real cause of Dr. Shair Ahmad's dismissal as Director of the Mathematics, Computer Science and Statistics Division" from U.T. at San Antonio. You contend that documents responsive to this request are excepted from disclosure pursuant to section 552.103(a) of the Government Code. To show that section 552.103(a) is applicable, U.T. must demonstrate that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to that litigation. *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 (1990) at 4.

You state it is your belief that litigation between U.T. and Dr. Ahmad "is a reasonable probability and not a remote possibility." You do not indicate that U.T. intends to pursue litigation against Dr. Ahmad. Your concern seems to be that Dr. Ahmad will sue U.T. over his removal as director of the Division of Mathematics, Computer Science, and Statistics. We note that he is still a tenured professor in that division. To support your assertions, you submitted an affidavit from an individual that states, in part:

I had a discussion with Shair Ahmad in which he stated that if he were dismissed from his position as Division Director of the Division of Mathematics, Computer Science and Statistics because of his exercise of First Amendment Rights, he would be in a position to file suit against the administration based on the exercise of those rights.

Also submitted to this office for review was a letter Dr. Ahmad wrote after his dismissal, providing his version of the events leading to his dismissal.

In Open Records Decision No. 452 (1986) at 4, this office stated:

Litigation cannot be regarded as "reasonably anticipated" unless there is more than a "mere chance" of it -- unless, in other words, we have concrete evidence showing that the claim that litigation may ensue is more than mere conjecture. Whether litigation is reasonably anticipated must be determined on a case-by-case basis. [Citations omitted.]

This office has found that litigation is reasonably anticipated when the governmental entity received an attorney's letter demanding damages and threatening to sue the governmental body. Open Records Decision No. 551 (1990). This office has also found that litigation is reasonably anticipated when a complaint has been filed against the governmental entity with the Equal Employment Opportunity Commission ("EEOC"). Open Records Decision Nos. 386 (1983) at 2; 336 (1982) at 1. However, this office has found there to be only a "mere chance" of litigation when an individual publicly stated that he intended to sue the governmental entity, but made no affirmative steps to bring such a suit. Open Records Decision No. 331 (1982). Also, an isolated telephone threat to bring suit, without more affirmative steps toward litigation, does not constitute reasonable anticipation of litigation. Open Records Decision No. 452 (1986) at 5. There may be a chance of litigation involving Dr. Ahmad and U.T., but you have presented no "concrete evidence" that litigation is reasonably anticipated. *Id.* at 4.

We note that even had you shown litigation to be reasonably anticipated, most of the documents at issue could not have been withheld from disclosure under section 552.103(a). You submitted to this office as responsive to the request a number of documents, most written to or by Dr. Ahmad. Absent special circumstances, once all parties to anticipated litigation have had access to documents at issue, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349, 320 (1982). Therefore, the majority of the documents at issue could not have been withheld under section 552.103(a) because Dr. Ahmad had already seen them.

Since you have not met your burden of showing that litigation is reasonably anticipated, the information at issue must be released. 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 under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Government Section

RHS/rho

Ref.: ID# 31893

Enclosures: Submitted documents

cc: Mr. Alvaro Arias
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(w/o enclosures)