



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 5, 1996

Mr. J. Robert Giddings
The University of Texas System
Office of General Counsel
201 W. 7th Street
Austin, Texas 78701-2981

OR96-2031

Dear Mr. Giddings:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 102089.

The University of Texas at El Paso (the "university") received a request "all tenure applications since 1991[,] [s]pecifically, . . . records that show the recommendations of each person or group involved in the tenure application review process." The university also received a request for three categories of correspondence involving Dr. Diana Natalicio. You claim that the requested information is excepted from disclosure under sections 552.103 of the Government Code. You have submitted samples of the requested information.¹ We have considered the exception you claim and reviewed the submitted information.

Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state is or may be a party. The university 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. *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

¹In reaching our conclusion here, we 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.

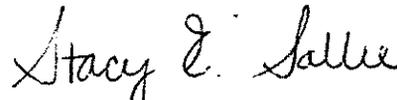
(1990) at 4. The university must meet both prongs of this test for information to be excepted under section 552.103(a).

The university has submitted a copy of a petition filed against it in county court in El Paso. Therefore, the university has met the first prong of the section 552.103 test. We have reviewed the submitted information and conclude that it relates to the litigation. Therefore, the university may withhold the requested information under section 552.103 of the Government Code.

We note that when the opposing party in the litigation has seen or had access to any of the information in these records, there is no justification for withholding that information from the requestor pursuant to section 552.103(a). Open-Records Decision Nos. 349 (1982), 320 (1982). In addition, the applicability of section 552.103(a) generally 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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee
Assistant Attorney General
Open Records Division

SES/ch

Ref.: ID# 102089

Enclosures: Submitted documents

cc: Ms. Paula Moore
El Paso Times
P.O. Box 20
El Paso, Texas 79999
(w/o enclosures)