



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 4, 1997

Dr. Richard Rafes
Vice President for Legal Affairs
and General Counsel
University of North Texas
P.O. Box 13426
Denton, Texas 76203-6426

OR97-1290

Dear Dr. Rafes:

You ask 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# 37316.

The University of North Texas (the "university") received a request for all records pertaining to the university's investigation of David A. Santos, a former faculty member, and his personnel file. You inform us that you have released the personnel file to the requestor, but you claim that the documents directly relating to the investigation are excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.103(a) excepts from disclosure information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, 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; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

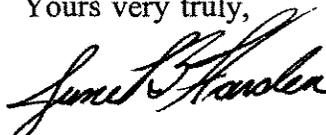
For information to be excepted from public disclosure by section 552.103(a), (1) litigation must be pending or reasonably anticipated, and (2) the information at issue must relate to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. Therefore, the governmental body has the burden of clearly establishing both prongs of this test.

In this instance, you have informed this office that the university is currently involved in litigation with Dr. Santos. We also conclude that the documents you have marked relate to the litigation and may be withheld.¹

Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the pending litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. Further, the applicability of section 552.103(a) 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,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/alg

Ref.: ID# 37316

Enclosures: Submitted documents

cc: Ms. April M. Washington
Denton Record-Chronicle
P.O. Box 369
Denton, Texas 76201
(w/o enclosures)

¹As we resolve this matter under section 552.103, we need not address the other exceptions you have raised. We caution, however, that some of the information may be confidential by law or may implicate the proprietary interest of a third party. Therefore, if the university receives a request in the future, at a time when litigation is no longer reasonably anticipated or pending, the university should seek a ruling from this office on the other exceptions raised before releasing any of the requested information. See Gov't Code § 552.352 (distribution of confidential information may constitute criminal offense).