



May 24, 2000

Ms. Esther Hajdar  
University of Texas System  
Office of the General Counsel  
201 West 7<sup>th</sup> Street  
Austin, Texas 78701-2981

OR2000-2057

Dear Ms. Hajdar:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 135535.

The University of Texas System (the “university”) received a request for all records and files regarding a certain former employee. You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

As a preliminary matter, we note the requestor’s contention that the university has failed to comply with the procedures prescribed by section 552.301 of the Government Code. Section 552.301 of the Government Code dictates the procedure that a governmental body must follow if it wishes to ask the attorney general for a decision determining whether requested information falls within an exception to disclosure. Among other requirements, the governmental body, “no later than the 10th business day after the date of receiving the written request,” must submit to the attorney general its request for a decision and a statement of the exceptions that apply to the requested information. Gov’t Code § 552.301(b). In addition, within the same ten business days, the governmental body must notify the requestor of its request for an attorney general decision. Gov’t Code § 552.301(d). If the governmental body fails to fulfill either of these requirements, the requested information “is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information.” Gov’t Code § 552.302.

Here, the university has submitted a signed statement that it received the request for information on March 8, 2000. See Gov't Code § 552.301(e)(1)(C). In support of this statement, the university has submitted a copy of the request that it received which shows a date stamp indicating receipt on March 8, 2000. Moreover, the university has submitted an affidavit along with supporting documentation showing that it received the request for information on March 8, 2000. The requestor maintains that the university received her request for information via facsimile on March 7, 2000. In an attempt to prove this fact, the requestor has submitted a copy of her request for information which she claims was sent via facsimile to the university on March 7, 2000. However, this enclosure shows no indication that it was received by the university on March 7, 2000.<sup>1</sup> In response to this assertion, the university has provided an affidavit and supporting documentation that indicate that the university received no facsimile from the requestor on March 7, 2000. Accordingly, given the overwhelming evidence the university has provided, we find that the university received the request for information on March 8, 2000.

As the university received the request for information on March 8, 2000, it had ten business days, up to and including March 22, 2000, to submit a request for a decision to this office, and to submit notice of its request for a decision to the requestor. This office received the university's request for a decision, along with a statement of the exception that applies to the requested information, on March 22, 2000 via hand delivery. The university has provided an affidavit indicating that it mailed a copy of this same letter to the requestor on March 22, 2000. Accordingly, we find that the university complied with the requirements prescribed by section 552.301.

We turn to the university's claim that the requested information is excepted from required public disclosure by section 552.103 of the Government Code. Section 552.103(a) excepts from disclosure information relating to litigation to which a governmental body is or may be a party. The governmental body has the burden of providing relevant facts and documents to show that section 552.103(a) is applicable in a particular situation. In order to meet this burden, the governmental body must show that (1) litigation has been pending or reasonably anticipated since the date of receipt of the request, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (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); Gov't Code § 552.103. The governmental body must meet both prongs of this test for information to be excepted under section 552.103.

You explain that the subject of the requested information is a former employee who was terminated by the university. On August 9, 1999, this individual filed a charge of discrimination with the Texas Commission on Human Rights (the "TCHR") alleging that in regard to his employment, the university discriminated against him because of his race. This

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<sup>1</sup>In addition, the enclosure does not even indicate that it was sent to the university on March 7, 2000, or that it was sent to the university at all.

office has ruled that a pending complaint before the Equal Employment Opportunity Commission (the "EEOC") indicates a substantial likelihood of litigation relating to the complaint. Open Records Decision Nos. 386 at 2 (1983), 336 at 1 (1982). The TCHR operates as a federal deferral agency under section 706(c) of title VII, 42 U.S.C. § 2000e-5. The EEOC defers jurisdiction over complaints alleging employment discrimination to the TCHR. *Id.* Therefore, we conclude that the university has shown that litigation has been reasonably anticipated at least since the time the university received the request for information. Furthermore, we conclude that the requested information relates to the anticipated litigation. Accordingly, the requested information is excepted under section 552.103.

However, in general, 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, documents that have been obtained from or provided to the opposing party to the anticipated litigation are not excepted from disclosure under section 552.103(a) and must be disclosed. We also note that the applicability of section 552.103(a) ends once the litigation has concluded or is no longer anticipated. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

Finally, we note that the submitted information includes two documents that have been filed with a court. Documents filed with a court are generally considered public. *See Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992). Moreover, information that is also contained in a public court record is not subject to the Public Information Act's discretionary exceptions. Gov't Code § 552.022(a)(17). Therefore, while the university may generally withhold the submitted information under section 552.103 as explained above, the university must release the court documents to the requestor. We have marked the documents that must be released.

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. *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,



E. Joanna Fitzgerald  
Assistant Attorney General  
Open Records Division

EJF\nc\ljp

Ref: ID# 135535

Encl: Submitted documents

cc: Ms. Portia Bott  
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(w/o enclosures)