



February 11, 2002

Mr. Dennis P. Duffy
General Counsel
University of Houston System
311 E. Cullen Building, Suite 212
Houston, Texas 77204-2028

OR2002-0622

Dear Mr. Duffy:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 158463.

The University of Houston (the “university”) received a request for the following information in regard to an evaluation by an appointed committee on the management of a specified college and its dean:

- (1) A copy of the final report of the committee and all existing drafts.
- (2) Copies of all information and comments received by you and other committee members from administrators, faculty, staff, students, and alumni regarding the review of NSM and Dean Bear.
- (3) All correspondence and records of the committee, both external and internal.

You claim that some of 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. We have also considered the comments submitted to this office by the requestor. *See* Government Code § 552.304.

Initially, we note that subsections 552.301(a), (b), and (c) provide:

(a) A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the [act's] exceptions . . . must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions.

(b) The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the written request.

(c) For purposes of this subchapter, a written request includes a request made in writing that is sent to the officer for public information, or the person designated by that officer, by electronic mail or facsimile transmission.

It appears from the documents submitted to this office that the department received the request for information on November 14, 2001. You did not request a decision from this office until December 3, 2001. Also, you fail to explain whether the chair of the faculty committee who received the initial e-mail request or the Office of the Provost to which the chair forwarded the e-mail request on November 30, 2001, is the officer for public information or the person designated by that officer to receive e-mail requests for information pursuant to section 552.301(c). Therefore, we will consider November 14, 2001, as the receipt date. Consequently, you failed to request a decision within the ten business day period mandated by section 552.301(a) of the Government Code.

Furthermore, pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request a signed statement or sufficient evidence showing the date the governmental body received the written request. You did not, however, submit to this office a signed statement or sufficient evidence showing the date the governmental body received the written request. Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the information is public and must be released.

In order to overcome the presumption that the requested information is public information, a governmental body must provide compelling reasons why the information should not be disclosed. *Id.*; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ); *see* Open Records Decision No. 630 (1994). You argue section 552.103 of the Government Code as an exception to disclosure. However, section 552.103 is a discretionary exception under the Public Information Act and, therefore, does not overcome the presumption that the submitted information is public information. *See* Open Records Decision No. 551 (1990) (statutory predecessor to section 552.103 serves only to protect a

governmental body's position in litigation and does not itself make information confidential). Therefore, you may not withhold the requested information under section 552.103 of the Government Code. You must release the requested information.

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).

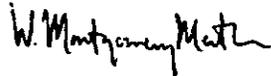
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

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,



W. Montgomery Meitler
Assistant Attorney General
Open Records Division

WMM/sdk

Ref: ID# 158463

Enc: Submitted documents

c: Dr. Donald L. Elthon
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(w/o enclosures)