OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS
JOHN CORNYN

March 18, 2002

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

OR2002-1322

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# 160194.

The University of Houston System (the "system") received a request for the following ten categories of information:

[1.] The May 19, 1994 grievance filed by Associate Professor Mary Mohs . . . .

[2.] Any reports of findings of the UH Grievance Committee subcommittee on Moh's complaint.

[3.] The December 1995 complaint filed by faculty member Beverly Gor with the UH Office of Affirmative Action regarding Professor Ira Wolinsky.

[4.] Any reports of findings or actions taken regarding Gor's complaint.

[5.] The June 23, 2000 grievance filed by faculty member Clint Stevens against the Executive Committee of the Department of Human Development and Consumer Sciences . . . .

[6.] Any reports of findings or actions taken regarding Stevens' complaint.

[7.] The Aug. 1, 2000 letter from Dr. Uma Gupta, Dean of the College of Technology to Professor Ira Wolinsky regarding "complaints of improper conduct . . . ."

[8.] The Aug. 24, 2000 letter from Dr. Gupta to Professor Wolinsky "confirm(ing) college's standards of conduct."

[9.] Copies of all other complaints of faculty members, staff members, or students concerning Professor Ira Wolinsky . . . .

[10.] All documents relating to disciplinary or counseling action in response to the above complaints.

First, we note you have not submitted information concerning categories 3, 7, and 8 of the request, nor have you indicated that you seek to withhold any such information; therefore, if such information exists, we assume it has already been released to the requestor. If the system has not released this information, you must release it to the requestor at this time. See Gov't Code §§ 552.301(a), .302. We caution that the distribution of confidential information constitutes a criminal offense. Gov't Code § 552.352. You state that the system has released some responsive information to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.026, 552.101, 552.103, and 552.114 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.[1]

Section 552.103 provides as follows:

> (a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature 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.
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> . . . .

[1]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.

> (c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

The system 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. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479, 481 (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). The system must meet both prongs of this test for information to be excepted under 552.103(a).

You inform us, and the submitted information indicates on its face, that the system is a party to a pending lawsuit, *Beverly Gor v. University of Houston*, Cause No. 2001-03199. You indicate that the case was pending on the date that the request for information was received. We find that litigation is pending, and that the information at issue is related to that litigation. Therefore, we conclude that the system may withhold the submitted information under section 552.103.

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 anticipated 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). As section 552.103 is dispositive, we do not address your other claimed exceptions.

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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,

Cindy Nettles
Assistant Attorney General
Open Records Division

CN/seg

Ref: ID# 160194

Enc. Submitted documents

c: Mr. Ken Fountain
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(w/o enclosures)