



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 31, 2006

Ms. Cherry Kay Wolf  
Associate General Counsel  
Texas A&M University System  
John B. Connally Building, 6<sup>th</sup> Floor  
301 Tarrow  
College Station, Texas 77480-7896

OR2006-03259

Dear Ms. Wolf:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 245285.

The Texas A&M International University (the "university") received two requests from the same requestor for information regarding appropriation of university funds and other financial information for the university and several named university employees. You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code.<sup>1</sup> We have considered the exception you claim and reviewed the submitted information.

Initially, we note that some of the submitted information is subject to chapter 572 of the Government Code. This chapter requires the mandatory filing of annual personal financial statements by certain "state officers" with the Texas Ethics Commission and designates those statements as public records. Gov't Code § 572.021 ("a state officer . . . shall file with the [Texas Ethics C]ommission a verified financial statement complying with Sections 572.022 through 572.0252"); Gov't Code § 572.032 ("Financial statements filed under this subchapter are public records."). Under section 572.002, the president of a public senior college or university is included in the definition of a "state officer" for the purposes of this chapter. Gov't Code § 572.002(5), (12). Accordingly, the submitted personal financial

---

<sup>1</sup>Although you also initially raised section 552.1235 for portions of the requested information, in subsequent correspondence with our office you withdrew your arguments regarding this exception.

statements, which have been filed with the Texas Ethics Commission by the university's president in accordance with chapter 572 of the Government Code, are expressly made public by statute. We note that the statements contain personal financial information that might otherwise be protected from disclosure. However, information expressly made public by statute may not be withheld pursuant to exceptions to required disclosure provided in the Act. *See* Gov't Code § 311.026 (where a general statutory provision conflicts with a specific provision, the specific provision prevails as an exception to the general provision); *see also* Open Records Decision Nos. 623 (1994), 525 (1989) (as a general rule, Act's exceptions do not apply to information made public by other statutes). Consequently, we determine that the personal financial statements belonging to the "state officer" at issue are expressly public under section 572.032 of the Government Code. Therefore, the university may not withhold any of the personal financial statements contained in Exhibit E.

Next we address your argument pertaining to the remaining submitted information. Section 552.103 of the Government Code 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.

...

(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.

Gov't Code § 552.103(a), (c). A governmental body 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 on the date the governmental body received the request for information, and (2) the information at issue is related to that litigation. *Univ. of Tex. Law Sch. v. Tex. 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). A governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

The question of whether litigation is reasonably anticipated must be determined on a case-by-case basis. *See* Open Records Decision No. 452 at 4 (1986). To establish that litigation is reasonably anticipated, a governmental body must provide this office with

“concrete evidence showing that the claim that litigation may ensue is more than mere conjecture.” *Id.* This office has stated that a pending Equal Employment Opportunity Commission (“EEOC”) complaint indicates litigation is reasonably anticipated. Open Records Decision Nos. 386 at 2 (1983), 336 at 1 (1982).

You inform us that prior to the date the university received the present requests, the requestor filed a complaint with the EEOC against the university for alleged discrimination. Based on your representations, we agree that the university reasonably anticipated litigation when it received these requests for information. However, the university has failed to explain, and the documents do not reflect, how the information at issue relates to the anticipated litigation. Accordingly, no portion of the submitted information may be withheld under section 552.103.

In summary, the university must release the submitted personal financial statements belonging to a “state officer” under section 572.032 of the Government Code. As the university argues no further exceptions to the disclosure of the remaining information, it must also be released to the requestor.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Dep't of Pub. Safety v. Gilbreath*, 342 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 Schless at the Office of the Attorney General 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,



Shelli Egger  
Assistant Attorney General  
Open Records Division

SE/er

Ref: ID# 245285

Enc. Submitted documents

c: Mr. Richard Tansey  
c/o Murraray Malakoff  
5219 Mcpherson, Suite 325  
Laredo, Texas 78041  
(w/o enclosures)