



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 3, 2006

Ms. Cherry Kay Wolf  
Associate General Counsel  
The Texas A&M University System  
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301 Tarrow  
College Station, Texas 77840-7896

OR2006-03285

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# 245368.

Texas A&M International University (the "university") received eleven requests from the same requestor for various information pertaining to travel and other university employee expenses, certain programs between the university and academic institutions in China, the requestor's application for employment with the university, university hiring policies and other employment related matters, certain budgetary, financial, and accounting information, certain correspondence between named individuals, accreditation or re-accreditation related to the Southern Association of Colleges and Schools and the Association to Advance Collegiate Schools of Business, records related to searches for external job positions, and certain personal financial statements. For reference, you have numbered the eleven requests from 136 through 142 and from 144 through 147. You state that the university will make available the information sought in the request numbered 138. You also state that some of the requested information is published on the Internet, and you will inform the requestor of the relevant website addresses.<sup>1</sup> You inform us that the university does not maintain

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<sup>1</sup>We note that the university must make available for inspection or provide copies of this information unless the requestor agrees to accept the university's reference to the website addresses as fulfillment of his request for this particular information. See Open Records Decision No. 682 (2005).

information responsive to the requests numbered 136, 140, 141, 142, 145, and 146.<sup>2</sup> You have submitted information responsive to the requests numbered 137, 139, 144, and 147, which you claim is excepted from disclosure under section 552.103 of the Government Code.<sup>3</sup> We have considered the exception you claim and reviewed the submitted information, some of which consists of representative samples of information.<sup>4</sup>

Initially, we note that some of the submitted information was created after the request for that information was received. Because this information was created after the university's receipt of the request, it is not encompassed by the request. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986) (governmental body not required to disclose information that did not exist at the time request was received). Accordingly, we do not address the availability of this non-responsive information, and the university need not release it in response to the request.

We also note that the submitted information includes the university president's personal financial statements that were the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2006-03259 (2006). In this prior ruling, we concluded that the university must release the personal financial statements under section 572.032 of the Government Code. As we have no indication that there has been a change in the law, facts, or circumstances on which this prior ruling was based, we conclude that the university must continue to rely on our decision in Open Records Letter No. 2006-03259 with respect to the personal financial statements that were subject to that

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<sup>2</sup>The Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

<sup>3</sup>We note that the request numbered 138 includes factual questions. The Act does not require a governmental body to answer factual questions, conduct legal research, or create new information in responding to a request. See Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990).

<sup>4</sup>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.

ruling.<sup>5</sup> See Gov't Code § 552.301(f); Open Records Decision No. 673 (2001) (setting forth the four criteria for a "previous determination").

We next address your claim under section 552.103 of the Government Code for the remaining submitted information. Section 552.103 provides in relevant part 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 was 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

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<sup>5</sup>The four criteria for this type of "previous determination" are (1) the records or information at issue are precisely the same records or information that were previously submitted to this office pursuant to section 552.301(e)(1)(D) of the Government Code; (2) the governmental body which received the request for the records or information is the same governmental body that previously requested and received a ruling from the attorney general; (3) the attorney general's prior ruling concluded that the precise records or information are or are not excepted from disclosure under the Act; and (4) the law, facts, and circumstances on which the prior attorney general ruling was based have not changed since the issuance of the ruling. See Open Records Decision No. 673 (2001).

Commission ("EEOC") complaint indicates litigation is reasonably anticipated. Open Records Decision Nos. 386 at 2 (1983), 336 at 1 (1982).

In this instance, you provide documentation showing that the requestor has filed a complaint with the EEOC against the university for alleged discrimination and retaliation resulting from his whistle-blowing activities. You also provide documentation in which the requestor states that he is pursuing multiple courses of legal action against the university and intends to "let the courts decide" if his claims are valid. Based on your representations and our review of the information at issue, we find that the university reasonably anticipated litigation when it received these requests for information. We also find that the remaining information at issue relates to the anticipated litigation. We therefore conclude that the university may withhold the remaining submitted information under section 552.103 of the Government Code.

We note, however, that 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). Further, the applicability of section 552.103(a) ends once the litigation has concluded or is no longer reasonably anticipated. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

In summary, the university must continue to rely on our decision in Open Records Letter No. 2006-03259 with respect to the personal financial statements that were subject to that ruling. The university may withhold the remaining responsive information under section 552.103 of the Government Code.

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 ten 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); *Tex. Dep't of Pub. 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 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 ten calendar days of the date of this ruling.

Sincerely,



Robert B. Rapfogel  
Assistant Attorney General  
Open Records Division

RBR/krl

Ref: ID# 245368

Enc. Submitted documents

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