



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 20, 2006

Mr. Scott Kelly
Deputy General Counsel
The Texas A&M University System
A&M System Building, Suite 2079
200 Technology Way
College Station, Texas 77845-3424

OR2006-07805

Dear Mr. Kelly:

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# 254585.

Texas A&M University (the "university") received a request for (1) a list of information regarding the case number, court, file date, and parties for all lawsuits filed against the university from January 1, 1997 to the present, or captions of such lawsuits; (2) all correspondence a named university professor exchanged with others, including the requestor, regarding a specified 2005 meeting of the university's Committee on Academic Freedom, Responsibility, Tenure and Promotion ("CAFRT"); (3) information regarding an item in another named university professor's curriculum vitae submitted for that professor's promotion; and (4) the examinations and syllabi for various mathematics courses in 2003 and 2004. You state the university has previously provided the requestor with the information responsive to part 2 of the request. You also state that the university has not

located information responsive to part 3 of the request.¹ You indicate that the university will follow the previous determination issued by this office in Open Records Letter No. 2005-06528 (2005) for the information responsive to part 4 of the request. See Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). You claim that the submitted information, responsive to part 1 of the request, is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.²

We note the submitted information consists entirely of the caption, or introductory, pages of court pleadings from lawsuits filed against the university. Section 552.022 of the Government Code provides in part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

...

(17) information that is also contained in the public court record[.]

Gov't Code § 552.022(a)(17). Section 552.022(a)(17) makes court-filed documents expressly public. Because the submitted caption pages consist entirely of information that has been filed in court, the university may withhold this information only to the extent it is made confidential under other law. Although the university raises section 552.103 of the

¹ The Act does not require a governmental body to disclose information that did not exist at the time the request was received, nor does it require a governmental body to prepare new information in response to a request. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Attorney General Opinion H-90 (1973); Open Records Decision Nos. 452 at 2-3 (1986), 342 at 3 (1982), 87 (1975); see also Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 416 at 5 (1984). However, to the extent the university locates information responsive to part 3 of the request that existed on the date the university received the request, we assume it has now been released. If not, the university must release such information immediately. See Gov't Code §§ 552.006, .301, .302; Open Records Decision No. 664 (2000) (concluding that Gov't Code § 552.221(a) requires that information not excepted from disclosure must be released as soon as possible under circumstances).

² We assume that the 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.

Government Code for this information, this exception is discretionary and, thus, does not make information confidential. *See, e.g., Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 663 (1991) (governmental body may waive section 552.103), 542 at 4 (1990) (statutory predecessor to section 552.103 may be waived), 522 at 4 (1989) (discretionary exceptions in general). Accordingly, the university may not withhold the submitted information pursuant to section 552.103. As you raise no other exceptions to disclosure, the university must release the submitted information 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*, 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 10 calendar days of the date of this ruling.

Sincerely,



Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/eb

Ref: ID# 254585

Enc. Submitted documents

c: Mr. Radoslov Dimitric
P. O. Box 87
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(w/o enclosures)