



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 30, 2006

Ms. Carol Longoria
Office of General Counsel
University of Texas System
201 West Seventh Street
Austin, Texas 78701-2902

OR2006-10029

Dear Ms. Longoria:

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# 258083.

The University of Texas at Austin (the "university") received two requests for salaries, promotions, raises, resumés, and job applications of specified university employees. You state that salary information will be released to the requestors. You state that you will redact social security numbers pursuant to section 552.147 of the Government Code.¹ You claim that the remaining requested information is excepted from disclosure under sections 552.101,

¹Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. We note that one of the submitted social security numbers belongs to one of the requestors. Because section 552.147 protects individual privacy interests, that requestor has a special right of access to his social security number under section 552.023 of the Government Code. *See* Gov't Code § 552.023 (person's authorized representative has special right of access to information held by governmental body that relates to the person and that is protected from public disclosure by laws intended to protect the person's privacy interests). Thus, the department may not withhold the requestor's social security number under section 552.147.

552.103, 552.117, 552.136, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.²

Section 552.103 of the Government Code provides in part:

(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).

You inform us that the university is currently involved in pending litigation with one of the requestors, who had filed a complaint with the Civil Rights Division of the Texas Workforce Commission ("TWC") prior to the date the university received the present requests.³ You state that "a lawsuit was filed in Travis County on June 6, 2006 styled as *Fred Richardson v. [the university]* Cause # 106CV427. To date the [u]niversity has not been served." Based

²We 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.

³We note that the Equal Employment Opportunity Commission generally defers jurisdiction to the TWC over complaints alleging employment discrimination. The TWC operates as a federal deferral agency under section 706(c) of title VII, 42 U.S.C. § 2000e-5.

on your representations and our review of the submitted documents, we find that the university was party to litigation when it received the present requests. We also find that the submitted information relates to this pending litigation. We therefore conclude that the university may generally withhold this information pursuant to section 552.103.

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). We note that some of the submitted information has been seen by the opposing party to the litigation. Accordingly, while some of the information at issue may be withheld under section 552.103, any information that has previously been seen by the opposing party may not be withheld under this exception. Furthermore, the applicability of section 552.103(a) ends once litigation has been concluded or is no longer reasonably anticipated. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

We note that some of the records that have been previously seen by the opposing party contain information that is subject to section 552.117 of the Government Code. Section 552.117(a)(1) excepts from disclosure the home addresses and personal telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the university may only withhold information under section 552.117 on behalf of current or former officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. For those employees who timely elected to keep their personal information confidential, the university must withhold the employees' home addresses and telephone numbers under section 552.117(a)(1). The university may not withhold this information under section 552.117 for those employees who did not make a timely election to keep the information confidential.

In summary, the university may withhold any of the submitted information not previously seen by the opposing party pursuant to section 552.103 of the Government Code. The information previously seen by the opposing party, and thus not protected under section 552.103, contains employees' home addresses and telephone numbers that must be withheld under section 552.117 of the Government Code, provided that the employees at issue made a timely section 552.024 election. The remaining responsive information must

be released to the requestor.⁴ As our ruling is dispositive, we do not address your remaining claims.

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

⁴Some of the documents to be released contain or consist of confidential information that is not subject to release to the general public. See Gov't Code § 552.352. However, the requestor in this instance has a special right of access to the information. Gov't Code § 552.023. Because some of the information is confidential with respect to the general public, if the university receives a future request for this information from an individual other than the person whose privacy interest is implicated or that person's authorized representative, the university should again seek our decision.

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/eb

Ref: ID# 258083

Enc. Submitted documents

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