



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 13, 2009

Ms. Neera Chatterjee
The University of Texas System
Office of General Counsel
201 West Seventh Street
Austin, Texas 78701-2902

OR2009-11329

Dear Ms. Chatterjee:

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# 353390.

The University of Texas M.D. Anderson Cancer Center (the "university") received a request for any information regarding the policies and procedures for making, handling, and investigating an internal affairs complaint. You claim that the requested information is excepted from disclosure pursuant to section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

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.

¹This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the university to withhold any information that is substantially different from the submitted information. See Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

...

(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 sufficient to establish the applicability of section 552.103 to the information that it seeks to withhold. To meet this burden, the governmental body must demonstrate: (1) that litigation was pending or reasonably anticipated on the date of its receipt of the request for information and (2) that the information at issue is related to that litigation. *See Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.). Both elements of the test must be met in order for information to be excepted from disclosure under section 552.103. *See Open Records Decision No. 551 at 4 (1990).*

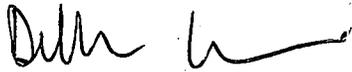
Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 at 4 (1986). To demonstrate that litigation is reasonably anticipated, the governmental body must furnish concrete evidence that litigation involving a specific matter is realistically contemplated and is more than mere conjecture. *Id.* Concrete evidence to support a claim that litigation is reasonably anticipated may include, for example, the governmental body's receipt of a letter containing a specific threat to sue the governmental body from an attorney for a potential opposing party. Open Records Decision No. 555 (1990); *see* Open Records Decision No. 518 at 5 (1989) (litigation must be "realistically contemplated"). On the other hand, this office has determined that if an individual publicly threatens to bring suit against a governmental body, but does not actually take objective steps toward filing suit, litigation is not reasonably anticipated. Open Records Decision No. 331 (1982).

You state that the requestor contacted the university's attorney and alleged that university employees have engaged in discrimination, harassment, and retaliation in violation of the law. You further state the requestor alleged slander, libel, and disparagement by university employees. However, you have not informed us that the requestor has taken any concrete steps toward the initiation of litigation. Consequently, after reviewing your arguments we find you have not established that the university reasonably anticipated litigation when it received the request for information. Accordingly, the university may not withhold any of the submitted information under section 552.103 of the Government Code. As you raise no other exceptions to disclosure, the submitted information must be released.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Debbie K. Lee
Assistant Attorney General
Open Records Division

DKL/dls

Ref: ID# 353390

Enc. Submitted documents

c: Requestor
(w/o enclosures)