



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 7, 2009

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

OR2009-14152

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# 357625.

The University of Texas Southwestern Medical Center (the "university") received a request for all faculty reviews from 2003 to the present for three named faculty members. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also received and considered comments from the requestor. See Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Initially, we note that some of the information you have submitted to us for review is not responsive to the request for information, as it was created after the date the university received this request. This ruling does not address the public availability of any information that is not responsive to the request, and the university is not required to release this information, which we have marked, in response to this request. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. App.—San Antonio 1978, writ dism'd).

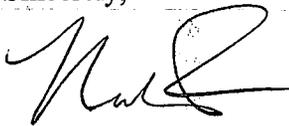
Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You seek to withhold the submitted information under section 552.101 of the Government Code in conjunction with the doctrine of qualified immunity. The doctrine of qualified immunity serves as an immunity from suit and protects government officials "from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Pearson v.*

Callahan, 129 S. Ct. 808, 815 (2009) (quoting from *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)); *Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985). You state that two of the named faculty members involved in this request are defendants in a pending lawsuit and have asserted the doctrine of qualified immunity as an affirmative defense. In this instance, you assert that because qualified immunity is an immunity from suit, the requestor is not entitled to discovery and thus, the information is confidential under section 552.101 of the Government Code. However, we note, and you acknowledge, that qualified immunity is an affirmative defense pertaining to immunity from suit. Although this affirmative defense may protect the university officials at issue from suit, you have not established how the doctrine of qualified immunity is law that makes public information pertaining to these officials confidential for the purposes of section 552.101 of the Government Code. Because you have failed to establish that qualified immunity makes this confidential, you may not withhold any of the submitted information under section 552.101 of the Government Code on this basis. As you raise no further 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, toll free, at (888) 672-6787.

Sincerely,



Nneka Kanu
Assistant Attorney General
Open Records Division

NK/eeg

Ref: ID# 357625

Enc. Submitted documents

cc: Requestor
(w/o enclosures)