



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 2, 2011

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

OR2011-16117

Dear Ms. Angadicheril:

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# 435054 (OGC# 138975).

The University of Texas Health Sciences Center at Houston (the “university”) received a request for six categories of information pertaining to the university and two named individuals or three specified entities. You state you do not have information responsive to categories 3, 4, and 6 of the request.¹ You also state you are releasing some information pertaining to category 5 of the request. You claim that the submitted information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

You claim the submitted information is excepted under section 552.103 of the Government Code. Section 552.103 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

¹The Act does not require a governmental body to release information that did not exist when it received a request or to create responsive information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1(1990).

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). The university 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 university 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, orig. proceeding); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); ORD 551 at 4. The university must meet both prongs of this test for information to be excepted under section 552.103(a).

You state, and provide documentation showing, that prior to the university's receipt of the request for information, the university was named as a defendant in a lawsuit filed by the requestor's client. Based on your representations and our review of the submitted information, we agree litigation was pending on the date the university received the request. Additionally, we find the university has established that the information at issue is related to the pending lawsuit for purposes of section 552.103. Accordingly, we conclude section 552.103 is generally applicable to the information at issue.

We note, however, once the opposing party to the pending litigation has seen or had access to the information at issue, through discovery or otherwise, no section 552.103(a) interest exists with respect to the information. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Thus, any information that has either been obtained from or provided to the opposing party in pending litigation is generally not excepted from disclosure under section 552.103(a) and must be disclosed. In this instance, the university received the information at issue from the opposing party to the litigation. You contend the opposing party's access to this information was in the usual scope of her employment as an employee of a company that has a contractual relationship with the university. However, we find the information at issue is a complaint to the university's human resources department that was not within the scope of the opposing party's employment. Thus, we conclude the university may not withhold the submitted information under section 552.103 of the Government Code.

As no further exceptions to disclosure are raised, the submitted information must be released.²

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/em

Ref: ID# 435054

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

²We note the information being released contains confidential information to which the requestor has a right of access. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual or authorized representative asks governmental body to provide information concerning the individual). Thus, if the university receives another request for this particular information from a different requestor, then the university should again seek a decision from this office.