



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 15, 2012

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

OR2012-02388

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# 446219 (OGC# 141012).

The University of Texas Health Science Center at Houston (the "university") received a request for the lowest MCAT score and grade point average of an applicant accepted into the Fall 2011 entering class at the university. You claim 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.

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 that claims an exception to disclosure under section 552.103 has the burden of providing relevant facts and documentation sufficient to establish the applicability of this exception to the information at issue. To meet this burden, the governmental body must demonstrate (1) litigation was pending or reasonably anticipated on the date of its receipt of the request for information and (2) the information at issue is related to the pending or anticipated litigation. *See Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479 (Tex. App.—Austin 1997, orig. proceeding); *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).

You state prior to the university's receipt of the instant request, the requestor filed a complaint with the United States Department of Education Office for Civil Rights (the "OCR"). You inform us the OCR is currently investigating the complaint. Based on your representations and our review, we conclude you have shown litigation was reasonably anticipated at the time the university received the present request. You state the submitted information relates to the anticipated litigation because the litigation alleges the university discriminated against the requestor in denying admission to the university and the submitted information relates to the university's defense against the allegations. Upon review, we find you have demonstrated the submitted information is related to the anticipated litigation. Accordingly, the university may withhold the submitted information under section 552.103 of the Government Code.

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,



Jessica Marsh
Assistant Attorney General
Open Records Division

JM/em

Ref: ID# 446219

Enc. Submitted documents

c: Requestor
(w/o enclosures)