KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 11, 2015

Ms. Ruth E. Shapiro
Senior Assistant General Counsel
Office of the General Counsel
University of Houston System
311 E Cullen Building
Houston, Texas 77204-2028

OR2015-09122

Dear Ms. Shapiro:

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# 563081.

The University of Houston (the "university") received a request for two specified emails pertaining to a specified incident. You claim the submitted information is excepted from disclosure under section 552.103 of the Government Code.[1] 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

[1]Although you also raise section 552.101 for the submitted information, you provide no arguments explaining how this exception is applicable to the information at issue. Therefore, we assume you no longer assert this exception. *See* Gov't Code §§ 552.301, .302.

> 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 that it seeks to withhold. To meet this burden, the governmental body must demonstrate that (1) litigation was pending or reasonably anticipated on the date the governmental body received 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, 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.). The governmental body must meet both prongs of this test for information to be excepted from disclosure under section 552.103(a). *See* Open Records Decision No. 551 at 4 (1990).

To demonstrate litigation is reasonably anticipated, the governmental body must provide this office "concrete evidence showing that the claim that litigation may ensue is more than mere conjecture." Open Records Decision No. 452 at 4 (1986). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. *Id.* We note that the fact that a potential opposing party has hired an attorney who makes a request for information does not establish that litigation is reasonably anticipated. *See* Open Records Decision No. 361 (1983). In Open Records Decision No. 638 (1996), this office stated, when a governmental body receives a notice of claim letter, it can meet its burden of showing that litigation is reasonably anticipated by representing that the notice of claim letter is in compliance with the requirements of the Texas Tort Claims Act (the "TTCA"), Civil Practice and Remedies Code, chapter 101, or an applicable municipal ordinance. If that representation is not made, the receipt of the claim letter is a factor we will consider in determining, from the totality of the circumstances presented, whether the governmental body has established litigation is reasonably anticipated. *See* ORD 638 at 4.

You state Exhibit 2 pertains to litigation reasonably anticipated by the university. You state, and provide supporting documentation demonstrating, prior to the university's receipt of the present request for information, the requestor put the university on notice of his client's intention to pursue a claim for damages against the university and his client's "injuries are and will be in excess of the statutory cap under the [TTCA]." While you state the requestor's notice to the university purports to provide proper notice under the TTCA, you do not affirmatively represent to this office the letter complies with the TTCA or an applicable ordinance; therefore, we will only consider the letter as a factor in determining whether the university reasonably anticipated litigation over the incident in question. Nevertheless, based on these representations, our review of the submitted information, and the totality of the circumstances, we determine the university has established it reasonably anticipated litigation prior to the date it received the present request for information. You assert, and we agree, Exhibit 2 is related to the anticipated litigation for purposes of section 552.103 because the

incident at issue is the basis for the requestor's client's claim. Accordingly, we conclude the university may withhold Exhibit 2 under section 552.103 of the Government Code.

We note, 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). Thus, information that has either been obtained from or provided to the opposing party in the litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. Further, the applicability of section 552.103(a) ends when the litigation has concluded. Attorney General Opinion MW-575 at 2 (1982); Open Records Decision Nos. 350 at 3 (1982), 349 at 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

Lauren Dahlstein
Assistant Attorney General
Open Records Division

LMD/som

Ref: ID# 563081

Enc. Submitted documents

c: Requestor
(w/o enclosures)