



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 23, 2015

Ms. Ana Vieira Ayala
Senior Attorney & Public Information Coordinator
The University of Texas System
Office of General Counsel
201 West Seventh Street
Austin, Texas 78701

OR2015-12419

Dear Ms. Ayala:

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# 568153 (OGC #160944).

The University of Texas at Austin (the "university") received a request for 1) specified categories of information pertaining to a named individual's research, symposium presentation, and post-doctoral fellowship; 2) specified categories of information pertaining to investigations into the requestor's graduate and dissertation research; 3) specified categories of information pertaining to the requestor's dissertation committee; 4) specified categories of information pertaining to a named individual; 5) notes created by a named individual pertaining to the requestor's research; 6) information provided by a named individual to another named individual pertaining to the requestor and the requestor's graduate research; 7) all communications between specified individuals during a specified time period; 8) all recordings of telephone calls between three named individuals during a specified time period; and 9) specified categories of information pertaining to specified types of disciplinary actions. You state you are releasing some information to the requestor. You state you will redact information pursuant to the Family Educational Rights and Privacy Act

(“FERPA”), 20 U.S.C. § 1232g(a).¹ You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.107 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.² We have also received and considered comments submitted by the requestor. *See* Gov’t Code § 552.304 (providing that interested party may submit written comments regarding why information should or should not be released).

Section 552.103 of the Government Code provides as follows:

(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.

Id. § 552.103(a), (c). A governmental body has the burden of providing relevant facts and documents to show the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing (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 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,

¹The United States Department of Education Family Policy Compliance Office (the “DOE”) has informed this office FERPA does not permit state and local educational authorities to disclose to this office, without parental or an adult student’s consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act. The DOE has determined FERPA determinations must be made by the educational authority in possession of the educational records. We have posted a copy of the letter from the DOE on the Attorney General’s website at <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

²We assume that the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). A governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

The university states, and provides documentation showing, a lawsuit styled *Suvi Orr v. The University of Texas at Austin, William C. Powers, Jr., Judith Langlois and Shelby Stanfield, in their official capacities only*, Cause No. 03-14-00299-CV, was pending against the university in the Third Court of Appeals when it received the instant request for information. The requestor asserts litigation against the university was not pending for purposes of section 552.103 because an earlier request was made by the requestor was received by the university on February 10, 2014, and the lawsuit was filed on February 14, 2014. However, we note the instant request was received by the university on April 16, 2015. Because the university's claim under section 552.103 is in response to the April 16, 2015, request and not the February 10, 2014, request, we find litigation was pending when the university received the request. We also find the university has established the submitted information is related to the pending litigation for purposes of section 552.103(a). Further, although the requestor also asserts the submitted information must be released pursuant to the National Institute of Health's policies, the requestor has failed to direct our attention to any law, nor are we aware of any law, under which the requestor would have a right of access to the information. See Open Records Decision Nos. 623 at 3 (1994) (exceptions in the Act generally inapplicable to information that statutes expressly make public), 613 at 4 (1993) (exceptions in Act cannot impinge in statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). Therefore, the university may withhold the submitted information under section 552.103(a) of the Government Code.³

Generally, 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 parties in the pending 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 once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

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/>

³As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

[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,

A handwritten signature in black ink, appearing to read 'Meredith L. Coffman', with a long horizontal flourish extending to the right.

Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/dls

Ref: ID# 568153

Enc. Submitted documents

c: Requestor
(w/o enclosures)