



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 28, 1995

Mr. J. Robert Giddings
Attorney
The University of Texas System
Office of General Counsel
201 West Seventh Street
Austin, Texas 78701-2981

OR95-107

Dear Mr. Giddings:

You have asked if certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 28607.

The University of Texas Southwestern Medical Center at Dallas (the "university") received an interagency memorandum from a faculty member that stated:

Shortly after assuming the Chairmanship of the Department of Anesthesiology in 1992, I requested a financial audit of the Department. Although I was given a preliminary report . . . (indicating that the Department needed to develop a system for tracking telephone calls and miscellaneous expenditures), I do not recall receiving a copy of the auditor's final recommendations.

As the former Chairman . . . , I would kindly request that I be provided with a copy of this document, as well as the preliminary budgetary documents for 1993-94, and the findings from the subsequent audit of the Department's finances which was conducted following my removal from the Chair position in April, 1993.

The university is treating this as a request for public information under chapter 552 of the Government Code. Providing job-related information to faculty members would not be a release of information to the public. Open Records Decision No. 464 (1987) at 5.

You contend that the requested information is excepted from disclosure under section 552.103(a). To show the applicability of section 552.103(a), a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. You submitted a letter from an attorney representing the faculty member to the president of the university. The attorney asked that the faculty member be reinstated to his former position as departmental chairman and that funding for his position be replaced. The letter also stated that if the university did not reply to the letter by March 22, 1994, the attorney would sue for damages:

caused by the breach of [the faculty member's] contract of employment, for violation of the rules and regulations of the university regarding university procedures for cessation of employment of tenured faculty members, for intentional infliction of emotional distress, for defamation, for conversion of funds of [the faculty member] to the University System, and for tortious interference with business relations.

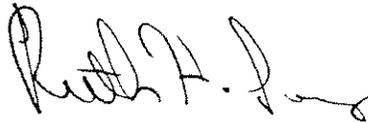
You have provided no information showing that litigation commenced once the attorney's deadline passed. Since the deadline set by the faculty member's attorney has passed without any concrete steps being taken toward litigation, we do not think that the university has established that litigation is reasonably anticipated. *See* Open Records Decision No. 518 (1989) (the litigation exception requires concrete evidence showing that litigation is reasonably anticipated).

Additionally, you have not explained how the document at issue is related to the causes of action that have been alleged. You state simply that the document is related to reasonably anticipated litigation. We have reviewed the document that you submitted to this office and it is not apparent to us how the information in this particular document is related to the demands and causes of action raised by the faculty members' attorney.

Also, the document that was submitted to this office as responsive to the request indicates that a copy was sent to the faculty member. Generally, once information has been obtained by the opposing party to potential litigation, no section 552.103(a) interest exists with respect to that information. Open Records Decision No. 349 (1982) at 2. If a copy was sent to the faculty member, the university could not have withheld the document even if litigation were reasonably anticipated. We note also that a completed audit is listed under section 552.022(1) of the Government Code as a category of information that is generally public.

Since the university has not met its burden of showing the applicability of section 552.103(a), the requested document must be released. We are resolving this matter with an informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Government Section

RHS/KHG/rho

Ref.: ID# 28607

Enclosures: Submitted documents

cc: Paul White, Ph.D., M.D.
Professor and McDermott Chair
Southwestern Medical Center
5323 Harry Hines Boulevard
Dallas, Texas 75235-9002
(w/o enclosures)

Mr. Bertran T. Bader III
1600 Pacific, Suite 2416
Dallas, Texas 75201
(w/o enclosures)