



Office of the Attorney General  
State of Texas

December 6, 1995

DAN MORALES  
ATTORNEY GENERAL

Mr. Scott A. Kelly  
Assistant General Counsel  
Office of the Vice Chancellor and General Counsel  
The Texas A&M University System  
John B. Connally Bldg.  
301 Tarrow, 6th Floor  
College Station, Texas 77843-1230

OR95-1369

Dear Mr. Kelly:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 36431.

The Texas A&M University System ("A&M") received four requests for information that you contend is excepted from required public disclosure under section 552.103 of the Government Code. Three of the requests for information are from the same requestor, Dr. Mary Zey. Dr. Zey seeks information relating to an inquiry of alleged plagiarism, vouchers and pay rolls for the disbursement of salary funds to a specific A&M employee, and all e-mail messages to and from four specific A&M employees for the past two years. The fourth request for information is from Dr. Celesta Albonetti. Dr. Albonetti seeks information relating to the inquiry of alleged plagiarism.

You have submitted four boxes of documents relating to the inquiry of alleged plagiarism and copies of the requested e-mail messages for our review. You did not submit copies or a representative sample of information responsive to the request for vouchers and pay rolls. You assert that all of the information within the boxes is excepted under section 552.103. However, you have marked only six e-mail messages as excepted under section 552.103.

Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state is or may be a party. A&M 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, and that (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. A&M must meet *both* prongs of this test for information to be excepted under section 552.103(a).

You state that Dr. Zey filed a lawsuit styled Civil Action H-95-4326, *Mary Zey Ph.D. v. Texas A&M University, John L. Boies, Harland Prechtel, James Burk, and David Scullli*, in the United States District Court for the Southern District of Texas, Houston Division. You have submitted a copy of the "Plaintiff's Original Complaint" for our information. Accordingly, you have satisfied the first prong by demonstrating that A&M is a party to pending litigation.

You assert that "[t]he law suit stems directly from the academic dishonesty complaint, and therefore the information sought is clearly within the scope of the litigation." Your assertions taken in conjunction with the content of the complaint and the content of the four boxes of documents demonstrate that this information relates to the pending litigation. Accordingly, you have met both prongs necessary to withhold the four boxes of documents under section 552.103. However, once information has been obtained by all parties to the litigation, for example, through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982).

We have reviewed and marked the file folder indicated as "Scientific Misconduct: **Jack Nation's Files (File Folder 8)**" as a representative sample of the type of information that you may withhold under section 552.103 of the Government Code. We note that many of the documents in this file folder are documents addressed to Dr. Zey, documents from Dr. Zey, and published documents that indicate on their face that Dr. Zey is the author. This information may not be withheld under section 552.103 as Dr. Zey has had access to these documents.<sup>1</sup> Open Records Decision Nos. 349 (1982), 320 (1982). Moreover, regardless of our markings, where A&M knows that the requestor has had access to a particular document, for example a document sent to the entire faculty of the Sociology Department or a document posted on a faculty bulletin board, that document must also be released. *See supra* note 1 (discussing situation where notations or markings have been made during inquiry). Finally, we note that 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).

---

<sup>1</sup>However, there are also documents of this type that contain handwritten notations and markings. We assume these notations were made by an inquiry committee member. Where the notations can be easily redacted, we have indicated that A&M may do so before releasing the document to the requestors. Where the markings and notations are intertwined with the content of the document, A&M may withhold the entire document. However, we stress that if A&M has a clean copy of such a document, it must be released to the requestors. Moreover, if the notations or markings were made by Dr. Zey, not by an inquiry committee member, the document must be released.

Although you did not make additional arguments demonstrating how the marked e-mail messages relate to the pending litigation, we agree that five of the six marked e-mail messages when read in conjunction with the content of the complaint demonstrate on their face that they relate to the pending litigation. However, we fail to see how the e-mail message on "Page 00184" relates to the pending litigation. As you provide no information concerning the relatedness of this particular e-mail message and the message does not demonstrate on its face that it relates to the pending litigation, you may not withhold this message under section 552.103.

Many of the remaining e-mail messages contain information that reveals whether an employee has family members. Sections 552.024 and 552.117 of the Government Code were amended by the Seventy-fourth Legislature to include social security numbers and information revealing whether a government employee has family members. Act of May 29, 1995, 74th Leg., R.S., ch. 1035, §§ 5, 9, 1995 Tex. Sess. Law Serv. 5127, 5130, 5132. In pertinent part, section 552.117 excepts from disclosure the home addresses, telephone numbers, social security numbers, or information revealing whether the following persons have family members: all peace officers, as defined by article 2.12 of the Code of Criminal Procedure; security officers commissioned under Education Code section 51.212; and all current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. *Id.* § 9, 1995 Tex. Sess. Law Serv. at 5132. Therefore, if the employee has made the election under section 552.024 of the Government Code to keep that information confidential, section 552.117 requires that A&M redact that information prior to releasing the remaining e-mail messages. *See* Open Records Decision Nos. 622 (1994), 455 (1987). You may not, however, withhold the home address, telephone number, social security number, or family information of an official or employee who made the request for confidentiality under section 552.024 after the request for information was made. Whether a particular piece of information is public must be determined at the time the request for it is made. Open Records Decision No. 530 (1989) at 5.

As stated above, you did not submit information responsive to the request for vouchers or pay rolls, nor did you make specific arguments demonstrating how this information would relate to the pending litigation. Moreover, the receipt or expenditure of public funds is ordinarily available to the public. Open Records Decision Nos. 518 (1989), 520 (1989), 541 (1990). *But see* Open Records Decision Nos. 600 (1992) (employee Tex-Flex forms and forms authorizing direct deposit of paychecks are excepted from disclosure by common-law privacy), 545 (1990) (information about personal investment decisions of public employees, such as participation in deferred compensation program, is excepted as financial information protected by common-law privacy). Accordingly, you may not withhold the vouchers or pay rolls under section 552.103 of the Government Code.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous

determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay  
Assistant Attorney General  
Open Records Division

LRD/LBC/ch

Ref: ID# 36431

Enclosures: Marked documents

cc: Dr. Mary Zey  
Department of Sociology  
Texas A&M University  
College Station, Texas 77843-4351  
(w/o enclosures)

Dr. Celesta Albonetti  
Department of Sociology  
Texas A&M University  
College Station, Texas 77843-4351  
(w/o enclosures)