



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 5, 1997

Ms. Susan O. Bradshaw
Senior Attorney
University of Texas System
201 West Seventh Street
Austin, Texas 78701

OR97-1024

Dear Ms. Bradshaw:

You ask whether 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# 105320.

The University of Texas System (the "university") received a request for information pertaining to the case of *Hopwood v. State of Texas, et al.*, 95 F.3d 53 (5th Cir. 1996). You state that certain responsive information has been released to the requestor, but assert that other responsive documents are excepted from disclosure pursuant to sections 552.103 and 552.107 of the Government Code. We have considered your arguments and have reviewed the information submitted.

Section 552.107 excepts information from disclosure if:

it is information that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Texas Rules of Civil Evidence, the Texas Rules of Criminal Evidence, or the Texas Disciplinary Rules of Professional Conduct.

Gov't Code § 552.107. In Open Records Decision No. 574 (1990), this office concluded that section 552.107 excepts from public disclosure only "privileged information," that is, information that reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinions; it does not apply to all client information held by a governmental body's attorney. *Id.* at 5. Section 552.107(1) does not protect purely factual information. *Id.* Upon review of the information submitted, we conclude the university may withhold the information you marked in Attachment B, as well as the entire contents of Attachments C and D, pursuant to section 552.107(1).

Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation or settlement negotiations to which the governing body is or may be a party. The university 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 (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. The university must meet both prongs of this test for information to be excepted under section 552.103(a).

You state that the case of *Hopwood v. State of Texas, et al.*, No. A 92 CA 563 SS, in the United States District Court for the Western Division of Texas, Austin Division, is on remand from the Fifth Circuit and before the federal district court on the matter of damages. We therefore find that litigation is ongoing in this matter. Upon review of the information contained in Attachment E, we conclude that it is related to the ongoing litigation and therefore may be withheld from disclosure pursuant to section 552.103(a). We note, however, that when the opposing party in the litigation has seen or had access to any of the information in these records, there is no justification for withholding that information from the requestor pursuant to section 552.103(a). Open Records Decision Nos. 349 (1982), 320 (1982). In addition, 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).

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

Yours very truly,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/ch

Ref.: ID# 105320

Enclosures: Marked documents

cc: Mr. Joseph Gourrier
University of Houston Law Center
Black Law Students Association
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(w/o enclosures)