



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 13, 1998

Mr. Michael H. Corley
Office of the General Counsel
University of Texas System
201 West Seventh Street
Austin, Texas 78701

OR98-0447

Dear Mr. Corley:

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# 112535.

The University of Texas at Brownsville (the "university") received a request for five categories of information which you assert are related to litigation between the requestor and the university. You state that there is no information responsive to one category of information, but assert that the other responsive documents are excepted from disclosure pursuant to section 552.103 of the Government Code. We have considered your arguments and have reviewed the information submitted.

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

You state that the requested records are related to the case of *Florey v. Kendall, et al*, No. A-96-CA-816, (W. D. Tex.), which concluded on November 6, 1997, and in which a judgment was entered on November 7, 1997. You assert that post-trial motions and an appeal are expected to be filed in this case. However, as we have no information before us indicating that post-trial motions and an appeal have in fact been filed in this case, which would thereby indicate that litigation is still pending, we conclude that the university has failed to meet the first prong of the 552.103(a) test. In

this regard, we note that the applicability of section 552.103(a) to requested records ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982). Thus, the requested information may not be withheld under section 552.103 and must be released to the requestor.¹

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# 112535

Enclosures: Submitted documents

cc: Dr. Randall Florey - Via Facsimile 956/546-7255
(w/o enclosures)

¹In arriving at our conclusion, we note that a governmental body must notify this office of a change in the circumstances of the litigation underlying a section 552.103(a) claim as soon as possible after receiving notice of that change. For example, when a governmental body contends that requested information relates to reasonably anticipated litigation and a lawsuit is later filed, the governmental body must then notify this office as soon as possible that litigation is now pending. Open Records Decision No. 638 (1996).