OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS
JOHN CORNYN

June 18, 2001

Mr. Scott A. Kelly
Deputy General Counsel
Texas A & M University System
John B. Connally Building, 6th Floor
301 Tarrow
College Station, Texas 77840-7896

OR2001-2585

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# 148505.

The West Texas A&M University (the "university") received a request for "all statements and documents . . . that pertain to University Discipline Case No. 1219-218" and any documents received from the Randall County District Clerk. You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also considered the comments submitted to this office by the requestor. *See* Gov't Code § 552.304.

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.
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> . . . .
>
> (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.

Gov't Code § 552.103(a), (c). Section 552.103 was intended to prevent the use of the Public Information Act as a method of avoiding the rules of discovery in litigation. Attorney General Opinion JM-048 at 4 (1989). The litigation exception enables a governmental body to protect its position in litigation by requiring information related to the litigation to be obtained through discovery. Open Records Decision No. 551 at 3 (1990). To show that the litigation exception is applicable, the university must demonstrate that (1) litigation was pending or reasonably anticipated at the time of the request and (2) the information at issue is related to that litigation. *See* Gov't Code § 552.103(a), (c); *see also University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.--Austin 1997, no pet.); *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 at 4 (1990).

You state that on February 27, 2001, prior to the university's receipt of the present request, the requestor "filed a pro se lawsuit against the Board of Regents of The Texas A&M University System and thirty-one (31) individuals." You further state that the requestor's numerous causes of action include "complaints regarding the discipline to which he has been subjected" as a student at the university. In this instance, we conclude that you have made the requisite showing that the requested information relates to litigation that was pending on the day that the request was received and may therefore be withheld from disclosure under section 552.103(a).

We note that if the opposing party in the litigation has seen or had access to any of the information in these records, there is no section 552.103(a) interest in withholding that information from the requestor. Open Records Decision Nos. 349 (1982), 320 (1982). Our review of the submitted information indicates that some of the submitted documents were created by the requestor or sent to the requestor. If the requestor has seen or had access to any of the submitted information, there would be no justification for now withholding that information from the requestor pursuant to section 552.103. Accordingly, any documents created by the requestor or previously sent to and received by the requestor must be released to the requestor. In addition, the applicability of section 552.103(a) ends once the litigation concludes. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).[1]

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the

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[1]We note that some of the requested information may be confidential by law and must not be released even after litigation has concluded. If you receive a subsequent request for the information, you should reassert your arguments against disclosure at that time. Gov't Code § 552.352 (distribution of confidential information is criminal offense).

governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

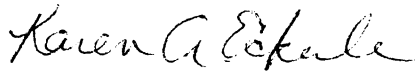
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Karen A. Eckerle
Assistant Attorney General
Open Records Division

KAE/sdk

Ref: ID# 148505

Enc: Submitted documents

cc: Mr. John Mayton
P.O. Box 60171
Canyon, TX 79016
(w/o enclosures)