



March 21, 2002

Mr. John Lawhorn
General Counsel
Texas Woman's University
P.O. Box 425497
Denton, Texas 76204-5497

OR2002-1413

Dear Mr. Lawhorn:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 160059.

The Texas Woman's University (the "university") received three written requests from the same individual for various categories of personnel/employment information. You indicate that the university does not possess any records responsive to the January 9, 2002 request.¹ You contend that the remaining requested information is excepted from disclosure under section 552.103 of the Government Code.

Section 552.103 of the Government Code is commonly referred to as the "litigation exception." Under section 552.103(a) and (c), the governmental body raising this exception must demonstrate that (1) litigation involving the governmental body was pending or reasonably anticipated at the time of the records request, and (2) the information at issue is related to that litigation. *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). A governmental body must meet both prongs of this test for information to be excepted under section 552.103.

In this instance, you have not demonstrated that litigation against the university was pending or reasonably anticipated on the dates the university received the three requests. We therefore conclude that you have not demonstrated the applicability of section 552.103 in this

¹We assume the university has made a good faith effort to identify any records responsive to this request. *See* Open Records Decision No. 87 (1975).

instance. Consequently, the university may not withhold the requested information pursuant to section 552.103 of the Government Code. Because you have raised no other applicable exception to required public disclosure, we conclude that the university must release the requested information, to the extent it exists, in its entirety.

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 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).

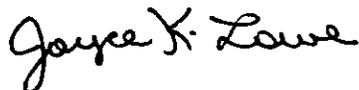
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,

A handwritten signature in cursive script that reads "Joyce K. Lowe".

Joyce K. Lowe
Assistant Attorney General
Open Records Division

JKL/RWP/sdk

Ref: ID# 160059

Enc: Submitted documents