



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

January 15, 2003

Mr. Renaldo L. Stowers  
Associate General Counsel  
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P.O. Box 310907  
Denton, Texas 76203-0907

OR2003-0318

Dear Mr. Stowers:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 175031.

The University of North Texas System (the "system") received a request for "all information and documents relating to the procurement of Directors' and Officers' Liability (D&O) insurance coverage by the University of North Texas and/or University of North Texas Health Science Center." The requestor subsequently narrowed his request "to specifically exclude any documents that contain communications between [the system] and its legal counsel." 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 representative sample of information.<sup>1</sup> We have also considered the comments submitted by the requestor. We have also considered the arguments submitted by the requestor. *See* Gov't Code § 552.304 (providing for submission of public comments).

Initially, we address the State Office of Risk Management's ("SORM") argument that the system is required to provide it with certain information pursuant to section 412.011 and 412.051 of the Labor Code. SORM argues that section 412.011 that it "maintain and review records of property, casualty, or liability insurance coverages purchased by or for a state agency" and that under section 412.051 each state agency is required to cooperate with SORM in the purchase of property, casualty, and liability lines of insurance. To this end,

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<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

SORM explains that it adopted rules promulgated in chapter 252 of title 28 of the Texas Administrative Code that require agencies to report purchases of insurance policies, including D&O insurance to SORM. We note that the system states that it “waives all claims to [its claimed] exception with respect to the D&O insurance policy issued by National Union and the documents the [system] provided to [the requestor] pursuant to the agency’s award of the statewide D&O insurance policy to National Union in compliance with” chapter 252 of title 28 of the Texas Administrative Code. SORM claims, however, that the system has not provided it with any such information. Therefore, as the system does not claim that such information is excepted from disclosure, such information must be released to SORM at this time. Thus, this ruling only address the applicability of the system’s claimed exception to the remaining responsive information.

Next, the requestor argues that release to it of the requested information would not constitute a release to the public under the Public Information Act (the “Act”). We agree that the request for information submitted to the system is not from a member of the public but from another governmental entity. We ruled in Open Records Decision No. 661 (1999) that whether a governmental entity may release information to another governmental entity is not a question under the Act as the Act is concerned with the required release of information to the *public*. Gov’t Code §§ 552.001, .002, .021; *see* Attorney General Opinions, H-683 (1975), H-242 (1974), M-713 (1970); Open Records Decision No. 655 (1997). For many years, this office has recognized that it is the public policy of this state that governmental bodies should cooperate with each other in the interest of the efficient and economical administration of statutory duties. *See, e. g.*, Attorney General Opinion H-836 (1976); Open Records Decision No. 655 (1997). *But see* Attorney General Opinions DM-353 at 4 n. 6 (1995) (interagency transfer prohibited where confidentiality statute enumerates specific entities to which release of confidential information is authorized and where receiving agency is not among statute’s enumerated entities), JM-590 (1986) (same); Open Records Decision No. 655 (1997) (same), 650 (1996) (transfer of confidential information to federal agency impermissible unless federal law requires its disclosure). In adherence to this policy, this office has acknowledged that information may be transferred between governmental bodies without violating its confidential character on the basis of a recognized need to maintain an unrestricted flow of information between governmental bodies. *See* Attorney General Opinions H-836 (1976), H-242 (1974), M-713 (1970); Open Records Decision Nos. 655 (1997), 414 (1984). Accordingly, the system has the discretion to release the remaining submitted information to the State Office of Risk Management. However, should you decline to exercise that discretion, you must nonetheless adhere to the following decision regarding the applicability of your claimed exception to the remaining responsive information.

Section 552.103 of the Government Code states in pertinent part:

- (a) Information is excepted from the requirements of Section 552.021 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.

....

(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.

To secure the protection of section 552.103(a), the system must demonstrate that the requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 588 (1991). The system has the burden of providing relevant facts and documents to show the applicability of an exception in a particular situation. The test for establishing that section 552.103(a) applies is a two-prong showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *University of Texas Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.--Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.).

To establish that litigation is reasonably anticipated, a governmental body must provide this office "concrete evidence showing that the claim that litigation may ensue is more than mere conjecture." Open Records Decision No. 452 at 4 (1986). Concrete evidence to support a claim that litigation is reasonably anticipated may include, for example, the governmental body's receipt of a letter containing a specific threat to sue the governmental body from an attorney for a potential opposing party. Open Records Decision No. 555 (1990); *see* Open Records Decision No. 518 at 5 (1989) (litigation must be "realistically contemplated"). This office has also concluded that litigation was reasonably anticipated when the potential opposing party filed a complaint with the Equal Employment Opportunity Commission. Open Records Decision No. 336 (1982). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 at 4 (1986).

You argue that the system is contemplating litigation against National Union Fire Insurance Company of Pennsylvania ("National Union") and that the Office of the Attorney General has assigned an Assistant Attorney General to represent the system in litigation against National Union. After reviewing your arguments and the submitted documents, we conclude that litigation is reasonably anticipated in this instance. We also find that the submitted information is related to the anticipated litigation for the purposes of section 552.103(a). Therefore, some of the submitted information may be withheld from disclosure pursuant to section 552.103.

We note, however, that some of the submitted information was obtained by the system from a representative of National Union. Generally, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party is not excepted from disclosure under section 552.103(a). Accordingly, the system may not withhold information either obtained from or provided to National Union under section 552.103. Further, 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).

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,



Kristen A. Bates  
Assistant Attorney General  
Open Records Division

KAB/KAE/sdk

Ref: ID# 175031

Enc: Submitted documents

c: Mr. Jonathan Bowers  
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(w/o enclosures)