



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 9, 2003

Ms. Carol Longoria  
Public Information Coordinator  
University of Texas System  
201 West 7<sup>th</sup> Street  
Austin, Texas 78701-2981

OR2003-6332

Dear Ms. Longoria:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 187398.

The University of Texas System (the "System") and the University of Texas at El Paso ("UTEP"), collectively referred to as the "Institutions," received essentially identical requests for copies of the following information:

All correspondence, emails and memos regarding UTEPS's use of "Free Speech Areas," as well as correspondence, emails and memos regarding pending litigation resulting from the use of "Free Speech Areas," written by [five named individuals] between January 1, 2003, and June 23, 2003.

You state the Institutions will release any responsive information for which the Institutions do not have an arguable exception under the Act. You assert the responsive submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.107 of the Government Code. We reviewed the information you submitted and considered the exceptions you claim.

First, we address your arguments under section 552.103 of the Government Code. This provision provides, in pertinent part, 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.

....

(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). The governmental body has the burden of providing relevant facts and documents sufficient to establish the applicability of section 552.103 to the information that it seeks to withhold. To meet this burden, the governmental body must demonstrate: (1) litigation was pending or reasonably anticipated on the date of its receipt of the request for information *and* (2) the information at issue is related to that litigation. *See Univ. of Tex. Law Sch. v. Tex. 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 [1<sup>st</sup> Dist.] 1984, writ ref'd n.r.e.); *see also* Open Records Decision No. 551 at 4 (1990). Both elements of the test must be met in order for information to be excepted from disclosure under section 552.103 of the Government Code. *Id.*

To establish the applicability of section 552.103, you provide supporting documentation showing that four of the individuals named in the request are defendants, in their official capacities as employees of the Institutions, in Civil Action No. EP-03-CA-0075, pending in the United States Court for the Western District, El Paso Division. Additionally, you have submitted a letter dated July 8, 2003 from Assistant Attorney General Lara Grant, in which she states that the Office of the Attorney General "is currently involved in litigation regarding the matters described in the . . . request and . . . information relating to that litigation is in the custody of UTEP." By showing that the complaint filed in federal district court was pending at the time the Institutions received the request for information, you have established the first prong of the litigation exception. Further, upon review of the responsive submitted information, we agree that it is related to the pending litigation for purposes of section 552.103(a). Thus, the Institutions may withhold the responsive information in Tabs 7 and 8 under section 552.103 of the Government Code.

However, we note that once the information has been obtained by all parties to the pending litigation, no section 552.103(a) interest exists with respect to that information. Open Records Decision No. 349 at 2 (1982). Also, the applicability of section 552.103(a) ends

when the litigation is concluded. Attorney General Opinion MW-575 (1982) at 2; Open Records Decision Nos. 350 at 3 (1982), 349 at 2 (1982).

In summary, the Institutions may withhold the submitted responsive information under section 552.103 of the Government Code. As section 552.103 is dispositive, we need not address your other claimed exceptions.

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 Dep't of Pub. 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 "Christen Sorrell".

Christen Sorrell  
Assistant Attorney General  
Open Records Division

CHS/seg

Ref: ID# 187398

Enc: Submitted documents

c: Mr. Darren Meritz  
El Paso Times  
P.O. Box 20  
El Paso, Texas 79901  
(w/o enclosures)