The ruling you have requested has been amended as a result of litigation and has been attached to this document.

ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 6, 2004

Ms. Carol Longoria
Public Information Coordinator
The University of Texas System
201 West Seventh Street
Austin, Texas 78701-2902

OR2004-6666

Dear Ms. Longoria:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 206659.

The University of Texas System (the "system") received a request for multiple categories of information related to the requestor's post-tenure review. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.107 of the Government Code, Texas Rule of Evidence 503, and Texas Rule of Civil Procedure 192.5.[1] We have considered your arguments and reviewed the submitted information.

Initially, we must address the system's obligations under section 552.301 of the Government Code in seeking a ruling from this office. In accordance with section 552.301(b), a governmental body seeking a ruling from this office must assert the exceptions to disclosure that apply to the requested information no later than the tenth business day after receiving the written request. In addition, within fifteen business days of receiving the request, the governmental body is required to submit (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply

[1]We note that you raise the attorney-client privilege in conjunction with section 552.101 of the Government Code. The attorney-client privilege is properly raised under section 552.107, not section 552.101. Open Records Decision No. 676 at 3 (2002). Moreover, Rule 503 of the Texas Rules of Evidence does not fall within the purview of section 552.101. *Id.* at 2.

to which parts of the documents. *See* Gov't Code § (e)(1)(A). The system acknowledges that it did not request a ruling from this office within ten business days as required by section 552.301(b) or submit the items required by section 552.301(e)(1)(A) within fifteen business days. Pursuant to section 552.302 of the Government Code, the system's failure to comply with section 552.301 results in the legal presumption that the information at issue is public and must be released.

Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). You assert that the information at issue is excepted from disclosure under sections 552.107 of the Government Code, Texas Rule of Evidence 503, and Texas Rule of Civil Procedure 192.5. However, this exception and these rules are discretionary in nature; they serve only to protect a governmental body's interests and may be waived. As such, they do not constitute compelling reasons to withhold information in this instance. *See* Open Records Decision Nos. 677 at 10 (2002) (claim of attorney work-product privilege under Texas Rule of Civil Procedure 192.5 does not provide compelling reason for purposes of section 552.302 if it does not implicate third party rights); Open Records Decision No. 676 at 11-12 (2002) (claim of attorney-client privilege under section 552.107 or Texas Rule of Evidence 503 does not provide compelling reason for purposes of section 552.302 if it does not implicate third party rights); *see also* Open Records Decision No. 522 (1989) (discretionary exceptions in general). Thus, the submitted information may not be withheld pursuant to section 552.107, Rule 503, or Rule 192.5 and must be released in accordance with section 552.302.

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

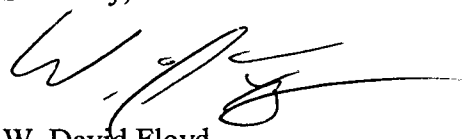
governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge 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,



W. David Floyd
Assistant Attorney General
Open Records Division

WDF/sdk

Ref: ID# 206659

Enc. Submitted documents

c: Dr. Marta Lujan
2301 Townes Lane
Austin, Texas 78703
(w/o enclosures)

CAUSE NO. D-1-GN-07-000419
(Severed from Cause No. GV 401986)

THE UNIVERSITY OF TEXAS AT AUSTIN, and THE UNIVERSITY OF TEXAS SYSTEM, Plaintiffs,	§	IN THE DISTRICT COURT OF
V.	§	TRAVIS COUNTY, TEXAS
GREG ABBOTT, ATTORNEY GENERAL OF TEXAS, Defendant.	§	250th JUDICIAL DISTRICT

Filed in The District Court of Travis County, Texas
APR 03 2007
At 6:14 o'clock P.M.
Amalia Rodriguez-Mendoza, Clerk

AGREED FINAL JUDGMENT

On this date, the Court heard the parties' joint motion for agreed final judgment. Plaintiffs The University of Texas at Austin and The University of Texas System (collectively, "UT") and Defendant Greg Abbott, Attorney General of Texas, appeared, by and through their respective attorneys, and announced to the Court that all matters of fact and things in controversy between them had been fully and finally compromised and settled. This severed cause is an action under the Public Information Act (PIA), Tex. Gov't Code Ann. ch. 552. The parties represent to the Court that, in compliance with Tex. Gov't Code Ann. § 552.325(c), the Attorney General sent to the requestor, Dr. Marta Lujan, on November 2, 2006, reasonable notice of the parties' agreement that UT must withhold some of the information at issue, and the requestor was also informed of her right to intervene in the suit to contest the withholding of this information. Requestor has not filed a motion to intervene nor has requestor informed the parties of her intention to intervene. After considering the agreement of the parties and the law, the Court is of the opinion that entry of an agreed final judgment is appropriate, disposing of all claims between these parties.

IT IS THEREFORE ADJUDGED, ORDERED AND DECLARED that:

1. The documents at issue in the Lujan request are excepted from disclosure by Tex.

Gov't Code § 552.107(1), and UT may withhold them from the requestor.

2. All costs of court are taxed against the parties incurring the same;

4. All relief not expressly granted is denied; and

5. This Agreed Final Judgment, which finally disposes of all claims between Plaintiffs and Defendant, is a final judgment.

SIGNED this the 3 day of April, 2007.

Margaret A. Cooper
PRESIDING JUDGE

APPROVED:

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