



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 14, 2009

Ms. Neera Chatterjee
Office of General Counsel
University of Texas System
201 West Seventh Street
Austin Texas 78701-2902

OR2008-15389A

Dear Ms. Chatterjee:

This office issued Open Records Letter No. 2008-15389 (2008) on November 7, 2008. We have examined this ruling and determined that an error was made. Where this office determines that an error was made in the decision process under sections 552.301 and 552.306, and that error resulted in an incorrect decision, we will correct the previously issued ruling. Consequently, this decision serves as the correct ruling and is a substitute for the decision issued on November 7, 2008. *See generally* Gov't Code 552.011 (providing that Office of Attorney General may issue decision to maintain uniformity in application, operation, and interpretation of Public Information Act (the "Act")).

You ask whether certain information is subject to required public disclosure under the Act, chapter 552 of the Government Code. Your request was assigned ID# 327945.

The University of Texas Medical Branch at Galveston (the "university") received a request¹ for (1) several categories of information that relate to five specified employment positions and (2) all incoming and outgoing e-mails of a specified list of employees, containing specified words, and occurring over a stated period of time.² You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, 552.117, 552.137,

¹We note that September 1, 2008, was Labor Day. Further, the university was closed from September 12, 2008 through December 9, 2008 due to Hurricane Ike. These days did not count towards the ten or fifteen business day deadlines for requesting a decision from this office and submitting arguments and information. *See* Gov't Code §§ 552.301(b), (e).

²You indicate the university sought and received clarification from the requestor regarding part of the request. *See* Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used).

and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the information you have submitted.³

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.

...

(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). A governmental body has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation was pending or reasonably anticipated on the date the governmental body received the request for information, and (2) the information at issue is related to that litigation. *Univ. of Tex. Law Sch. v. Tex. 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(a).

You state and provide documentation showing that prior to the university's receipt of this request, lawsuits styled *Erik Tolpo v. University of Texas Medical Branch at Galveston*, Cause No. A-179183, 58th Judicial District, in the District Court of Jefferson County, and *Erik Tolpo v. University of Texas Medical Branch at Galveston*, Cause No. A-181529, 58th Judicial District, in the District Court of Jefferson County, were filed against the university and are currently pending. You further state the lawsuits pertain to alleged violations of Texas law due to sexual harassment, hostile work environment, discrimination based on gender, and retaliation. Upon review, we agree that litigation was pending on the date the

³You state that a portion of the submitted information is a representative sample. 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.

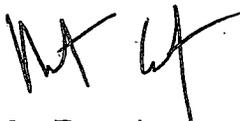
university received the request, and the information at issue is related to the pending litigation for the purposes of section 552.103. Therefore, the submitted information is generally subject to section 552.103 of the Government Code.

We note, however, that the requestor is the opposing party in the pending litigation. Further, the requestor has seen or had access to portions of the submitted information. The purpose of section 552.103 is to enable a governmental body to protect its position in litigation by forcing parties seeking information relating to that litigation to obtain it through discovery procedures. *See* ORD 551 at 4-5. If the opposing party has seen or had access to information relating to pending litigation, through discovery or otherwise, then there is no interest in withholding such information from public disclosure under section 552.103. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Thus, to the extent that the requestor already has seen or had access to the submitted information, such information may not be withheld under section 552.103. Otherwise, the university may withhold the submitted information under section 552.103.⁴ We note that the applicability of section 552.103 ends once the litigation concludes or is no longer reasonably anticipated. *See* Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

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

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Matt Entsminger
Assistant Attorney General
Open Records Division

MRE/jb

⁴As our ruling is dispositive, we need not address your remaining arguments against disclosure.

Ref: ID# 327945

Enc. Submitted documents

c: Requestor
(w/o enclosures)