



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 15, 2009

Ms. Neera Chatterjee  
The University of Texas System  
Office of the General Counsel  
201 West 7<sup>th</sup> Street  
Austin, Texas 78701-2902

OR2009-04988

Dear Ms. Chatterjee:

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# 339998.

The University of Texas System (the "university") received a request for four categories of information related to a specified appeal investigation and complaints involving the University of Texas of the Permian Basin's police department. You state the university does not have information responsive to categories three and four of the request.<sup>1</sup> You state the university has released some responsive information to the requestor. You claim portions of the submitted information are not subject to the Act. You also claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.108, 552.130, 552.136, 552.137, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>2</sup>

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<sup>1</sup>We note that the Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.Civ.App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

<sup>2</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.

Initially, we note some of the submitted information, Tab 5B, was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2009-04841 (2009). As we have no indication that the law, facts, and circumstances on which this prior ruling was based have changed, the university must continue to rely on Open Records Letter No. 2009-04841 as a previous determination and withhold or release the information in Tab 5B in accordance with that ruling.<sup>3</sup> See Open Records Decision No. 673 (2001) (so long as law, facts, circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

Next, we address your claim under section 552.103 of the Government Code for the information not previously requested and ruled upon, Tab 5A. Section 552.103 provides in relevant 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 university has the burden of providing relevant facts and documents to show that the section 552.103 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 that 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). The university must meet both prongs of this test for information to be excepted under section 552.103.

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<sup>3</sup>As we are able to make this determination, we need not address your argument that some of this information is not subject to the Act, or your arguments under sections 552.101, 552.108, 552.130, 552.136, and 552.147 of the Government Code.

You state, and provide documentation showing, the requestor filed a claim of discrimination with the Equal Employment Opportunity Commission (the "EEOC") prior to the date of the university's receipt of this request for information. This office has stated that a pending EEOC complaint indicates that litigation is reasonably anticipated. *See* Open Records Decision Nos. 386 at 2 (1983), 336 at 1 (1982). Thus, we agree the university reasonably anticipated litigation on the date it received the present request for information. You also state the information at issue is related to the anticipated litigation. Based on your representations and our review, we conclude section 552.103 is generally applicable to Tab 5A.<sup>4</sup>

We note, however, the requestor appears to have already seen or had access to some of the information at issue. 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 the litigation to obtain such information through discovery procedures. *See* Open Records Decision No. 551 at 4-5 (1990). Thus, when the opposing party has seen or had access to information relating to anticipated litigation, there is no interest in withholding that information from public disclosure under section 552.103. *See* Open Records Decision Nos. 349 (1982), 320 (1982). We further note that the applicability of section 552.103 ends once the related litigation concludes or is no longer reasonably anticipated. *See* Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982). Accordingly, the information the requestor has not seen or had access to in Tab 5A may be withheld under section 552.103 of the Government Code. The information the requestor has seen or had access to in Tab 5A may not be withheld under section 552.103 and must be released.

In summary, the university must rely on Open Records Letter No. 2009-04841 as a previous determination and withhold or release the information in Tab 5B in accordance with that ruling. The information the requestor has not seen or had access to in Tab 5A may be withheld under section 552.103 of the Government Code. The information the requestor has seen or had access to in Tab 5A must be released.

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.

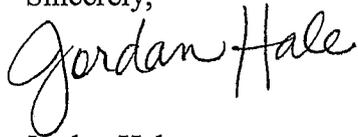
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), 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

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<sup>4</sup>As our ruling is dispositive, we need not address your argument under section 552.107 of the Government Code.

information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,

A handwritten signature in cursive script that reads "Jordan Hale". The signature is written in black ink and is positioned above the typed name.

Jordan Hale  
Assistant Attorney General  
Open Records Division

JH/rl

Ref: ID# 339998

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)