



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 1, 2009

Ms. Valerie Coleman-Ferguson
Associate General Counsel
University of Houston System
311 East Cullen Building
Houston, Texas 77204-2028

OR2009-09114

Dear Ms. Coleman-Ferguson:

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# 347812.

The University of Houston (the "university") received a request for the following categories of information: 1) a specified report submitted to the Faculty Senate Executive Committee; 2) meeting minutes from specified meetings of the Faculty Affairs Committee; and 3) all e-mails, memos, and correspondence to or from a named faculty member concerning Students Against Sweatshops, the Designated Supplier Program, the Worker Rights Consortium, or the University Coordination Commission from January 1, 2009, to the present. You state you have released information responsive to the first two categories and some information responsive to the third category. You claim the remaining 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.¹

¹We 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 that some of the submitted information, which we have marked, is not responsive to the instant request for information because it was created after the university received the request. This ruling does not address the public availability of any information that is not responsive to the request, and the university is not required to release that information in response to this request.

You contend the submitted information is protected under section 552.103 of the Government Code, which provides:

(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).

In this instance, you state, and provide documentation showing, that prior to the university's receipt of this request, the requestor filed a lawsuit against twenty-nine university employees, both individually and in their official capacities. You also state that the submitted information is related to the pending litigation. Based on your representations and our review, we find the submitted information is related to the pending litigation for the purposes of section 552.103. We therefore conclude the university may withhold the submitted responsive information under section 552.103 of the Government Code.

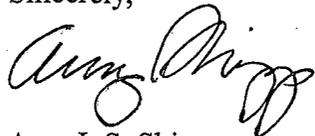
We note, however, that once the information at issue has been obtained by all parties to the pending litigation through discovery or otherwise, no section 552.103(a) interest exists with

respect to the information. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Thus, any information at issue that has either been obtained from or provided to all opposing parties in the pending litigation is not excepted from disclosure under section 552.103(a) and must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has concluded. *See* Attorney General Opinion MW-575 (1982); *see also* 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,



Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/rl

Ref: ID# 347812

Enc. Submitted documents

cc: Requestor
(w/o enclosures)