



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

August 5, 2009

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

OR2009-10861

Dear Ms. 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# 351204.

The University of Houston (the "university") received a request for the following categories of information: 1) all correspondence between two named individuals from January 1, 2009 to the present; 2) the most recent royalty and/or licensing reports for the university's logo, trademarks, and brand for the preceding year; and 3) all correspondence, e-mails, and memorandums to or from a named faculty member concerning Students Against Sweatshops, the Designated Suppliers Program, the Worker Rights Consortium, and the University Coordinating Commission from January 1, 2009, to the present. You state the university has released information responsive to the first two categories and some information responsive to the third category.<sup>1</sup> 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.<sup>2</sup>

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<sup>1</sup>You indicate that the university will redact information from the records it is releasing pursuant to the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g. We note our office is prohibited from reviewing education records to determine whether appropriate redactions under FERPA have been made. Therefore, we will not address the applicability of FERPA to any of the submitted information.

<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, you inform us that the submitted information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2009-09114 (2009). We presume that the facts and circumstances have not changed since the issuance of this prior ruling. To the extent the information at issue is identical to the information previously requested and ruled upon by this office, the university may continue to withhold or release the submitted information in accordance with Open Records Letter No. 2009-09114. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and 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 a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). We note that one of the submitted e-mails, which we have marked, was not encompassed by the previous ruling as it was created after the date of receipt by the university of the information request that gave rise to that ruling. Therefore, we will consider your argument for this information.

You contend the information at issue 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 t 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 information at issue is related to the pending litigation for the purposes of section 552.103. We therefore conclude the university may withhold this 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 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).

In summary, with the exception of the information we have marked, the university may continue to rely on our ruling in Open Records Letter No. 2009-09114(2009) as a previous determination and dispose of the submitted information in accordance with that ruling. The university may withhold the marked information under section 552.103 of the Government Code.

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

Sincerely,



Pamela Wissemann  
Assistant Attorney General  
Open Records Division

PFW/dls

Ref: ID# 351204

Enc. Submitted documents

c: Requestor  
(w/o enclosures)