



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

August 28, 2009

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

OR2009-12158

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# 354169.

The University of Houston (the "university") received a request for: (1) the resume and salary information for two specified university employees; (2) information related to complaints against the university's police department since January 1, 2009; and (3) information concerning two specific apparel companies since January 1, 2009. You state that the university has released or will release some information. You claim that the submitted information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.103 of the Government Code 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 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 the university was a party to two pending lawsuits on the date it received the present request for information: (1) *Timothy J. O'Brien v. University of Houston, John Rudley, individually and in his official capacity*, Civil Action No. H-08-2337, filed in the United States District Court for the Southern District of Texas, Houston Division; and (2) *Timothy J. O'Brien, Yuna O'Brien v. Richard Alderman, individually and in his official capacity, et al.*, Cause No. 2009-20328, filed in the District Court of Harris County, Texas, 280th Judicial District. Based on your representations and our review, we conclude litigation involving the university was pending on the date the university received the present request. You state that the submitted information is related to the pending litigation because this information relates to: (1) the professional qualifications of two potential witnesses in the pending lawsuits, who also may potentially be added as individual defendants; and (2) the credibility of the university's police department, whose officers' decisions are material to the plaintiffs' claims in the pending litigation. Based on your representations and our review, we conclude that the submitted information is related to pending litigation for the purposes of section 552.103. Therefore, we conclude the university may withhold the submitted 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). 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,



Ryan T. Mitchell
Assistant Attorney General
Open Records Division

RTM/rl

Ref: ID# 354169

Enc. Submitted documents

cc: Requestor
(w/o enclosures)