



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 20, 2012

Ms. Neera Chatterjee  
The University of Texas System  
201 West Seventh Street  
Austin, Texas 78701-2902

OR2012-04073

Dear Ms. Neera 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# 448095 (OGC #141329).

The University of Texas at Austin (the "university") received a request for information pertaining to the employment and performance of a named individual; specified salary information; and any disclosures or documentation to anyone in university executive leadership related to any relationship between the named individual and another specified individual, including information pertaining to egg donation or surrogacy. You state some information will be released to the requestor. You also state, as permitted by section 552.024(c) of the Government Code, you will redact information subject to section 552.117 of the Government Code.<sup>1</sup> In addition, you state you will redact personal e-mail addresses under section 552.137 of the Government Code in accordance with Open Records Decision No. 684 (2009).<sup>2</sup> You claim the submitted information is excepted from

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<sup>1</sup>Section 552.117 of the Government Code excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body. Gov't Code § 552.117(a). Section 552.024 of the Government Code authorizes a governmental body to withhold information subject to section 552.117 without requesting a decision from this office if the employee or official or former employee or official chooses not to allow public access to the information. *See* Gov't Code § 552.024(c).

<sup>2</sup>This office issued Open Records Decision No. 684, a previous determination to all governmental bodies, which authorizes the withholding of ten categories of information, including personal e-mail addresses of members of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

disclosure under sections 552.103 and 552.107 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>3</sup>

Section 552.103 of the Government Code provides, in relevant part:

(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 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 is 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). The 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, the university received the request for information after the lawsuit styled *Chrystie T. Nguyn v. University of Texas School of Law*, Civil Action No. 1:111-CV323-SS, was filed in the United States District Court for the Western District of Texas, Austin Division. Based upon your representation and our review, we find litigation involving the university was pending when it received the request. You explain the submitted information is related to the pending litigation because the employment information sought by the requestor relates to the allegations of discrimination and retaliation made by the named individual against the university, which form the basis of the lawsuit. Based on your representations and our review, we conclude the submitted information is related to the pending litigation for purposes of section 552.103. Therefore, section 552.103 is generally applicable to the submitted information.

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<sup>3</sup>We assume 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 those records contain substantially different types of information than that submitted to this office.

We note the purpose of section 552.103 is to enable a governmental body to protect its position in litigation by forcing parties to obtain information relating to litigation through discovery procedures. *See* ORD 551 at 4-5. Thus, when the opposing party has seen or had access to information relating to litigation, through discovery or otherwise, there is no interest in withholding that information from public disclosure under section 552.103. *See* Open Records Decision Nos. 349 (1982), 320 (1982). In this instance, you state the opposing party to the litigation, the named individual, may have already seen or had access to some of the information at issue. However, you state this individual only saw or had access to this information in the usual scope of her employment. Such information is not considered to have been obtained by the opposing party to litigation. However, portions of the submitted information, which we have marked, are correspondence the named individual has seen or had access to outside the scope of her employment. Therefore, with the exception of the information we have marked for release, the university may withhold the submitted information under section 552.103 of the Government Code.<sup>4</sup> We note that the applicability of this exception ends once the related litigation concludes. *See* Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”<sup>5</sup> Gov’t Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681–82. The type of information considered highly intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. In addition, this office has found some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). We find a portion of the remaining information is highly intimate or embarrassing and a matter of no legitimate public concern. Therefore, the information we have marked must be withheld under section 552.101 in conjunction with common-law privacy.

In summary, with the exception of the information we have marked for release, the university may withhold the submitted information under section 552.103 of the Government Code.

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<sup>4</sup>As our ruling is dispositive for this information, we need not address your remaining arguments against disclosure.

<sup>5</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Within the information we have marked for release, the university must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. The remaining information 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 information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,



Michelle R. Garza  
Assistant Attorney General  
Open Records Division

MRG/em

Ref: ID# 448095

Enc. Submitted documents

c: Requestor  
(w/o enclosures)