



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 3, 2013

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

OR2013-11381

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# 492277 (UT OGC #149553).

The University of Texas-Pan American (the "university") received a request for information relating to a specified professor, including (1) her PhD thesis with mathematics specialization; (2) her MA degree and transcripts; (3) her BS degree from the university and transcripts; (4) any recommendation letters and supporting documents to justify her first employment at the university, getting tenure, and subsequent promotion to full professor, including the names of the persons who recommended her for these promotions; (5) a list of subjects she taught at the university from the day she started working until the date of the request; and (6) a list and details of all grants she secured. You state the university has no information responsive to items 1 and 3 of this request.¹ You further state that you have released the information responsive to item 6 and a portion of the information for item 5. You claim the remaining requested information is excepted from disclosure under sections 552.102, 552.103, 552.117, and 552.147 of the Government Code. We have

¹We note that Act does not require a governmental body to release information that did not exist when it received a request, create responsive information, or obtain information that is not held by the governmental body or on its behalf. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 534 at 2-3 (1989), 518 at 3 (1989), 452 at 3 (1986), 362 at 2 (1983).

considered the exceptions you claim and reviewed the submitted representative sample of information.²

Section 552.103 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). A governmental body has the burden of providing relevant facts and documents to show section 552.103(a) applies 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 requested information is related to that litigation. *See 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). *See* ORD 551 at 4.

You contend the information at issue is related to pending litigation in which the university is the named defendant. You inform us, and have provided documentation showing, litigation is pending in County Court at Law #5 of Hidalgo County, Texas, Cause No. CL-12-1395-E, *Partha Ray vs. The University of Texas-Pan American*. You state the information at issue is related to the pending lawsuit. Based on your representations and our review, we find litigation was pending when the university received this request for information and the information at issue is related to the pending litigation for the purposes

²We 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.

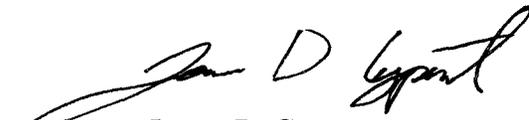
of section 552.103. Therefore, the university may withhold the information at issue under section 552.103 of the Government Code.³

We note, however, 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). 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



James D. Cypert
Assistant Attorney General
Open Records Division

JDC/ac

Ref: ID# 492277

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³As our ruling is dispositive, we need not address your remaining arguments against disclosure.