



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 20, 2013

Ms. Karin W. Riley
Associate General Counsel
UNT System
1155 Union Circle, #310907
Denton, Texas 76203-5017

OR2013-20256

Dear Ms. Riley:

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# 506296 (PIR No. 002139).

The University of North Texas System (the "system") received a request for four categories of information pertaining to a specified accident. You claim 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, 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, orig. proceeding); *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).

The question of whether litigation is reasonably anticipated must be determined on a case-by-case basis. *See* Open Records Decision No. 452 at 4 (1986). To demonstrate that litigation is reasonably anticipated, the governmental body must furnish concrete evidence that litigation involving a specific matter is realistically contemplated and is more than mere conjecture. *Id.* This office has concluded that a governmental body's receipt of a claim letter that it represents to be in compliance with the notice requirements of the Texas Tort Claims Act ("TTCA"), chapter 101 of the Civil Practice and Remedies Code, or an applicable municipal ordinance, is sufficient to establish that litigation is reasonably anticipated. *See* Open Records Decision No. 638 at 4 (1996). If that representation is not made, the receipt of a claim letter is a factor we will consider in determining, from the totality of the circumstances presented, whether the governmental body has established that litigation is reasonably anticipated. *Id.*

You state the system received a notice of claim letter from an attorney representing an individual who was injured by a system driver. You have submitted the notice of claim letter for our review and state it complies with the notice requirements in the TTCA. However, we note the submitted notice of claim letter was received on August 30, 2013, which is after the date the instant request was received by the system on August 28, 2013. Accordingly, we find the system has failed to demonstrate the system reasonably anticipated litigation on the date it received the instant request for information. Accordingly, the system may not withhold the submitted information under section 552.103 of the Government Code.

We note some of the submitted information is subject to section 552.130 of the Government Code.¹ Section 552.130 of the Government Code provides information relating to a motor vehicle title or registration issued by a Texas agency, or an agency of another state or country, is excepted from public release. Gov't Code § 552.130(a)(2). Upon review, we find

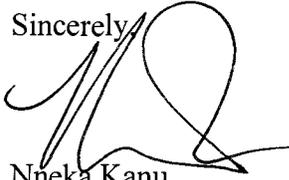
¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

the system must withhold the information we have marked under section 552.130 of the Government Code. As no further exceptions to disclosure have been raised, the system must release the remaining information.²

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,



Nneka Kanu
Assistant Attorney General
Open Records Division

NK/akg

Ref: ID# 506296

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²We note the requestor has a right of access to his client's driver's license information pursuant to section 552.023 of the Government Code. *See* Gov't Code § 552.023(a) ("[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests"); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Section 552.130(c) of the Government Code authorizes a governmental body to redact information protected by section 552.130(a) without the necessity of requesting a decision under the Act. *See* Gov't Code § 552.130(c). Therefore, if the system receives another request for the same information from a person who would not have a right of access to this information, section 552.130(c) authorizes the system to redact the it without requesting another ruling.