



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 11, 2014

Ms. Ana Vieira
Attorney and Public Information Coordinator
University of Texas System
201 West Seventh Street
Austin, Texas 78701-2902

OR2014-10010

Dear Ms. Vieira:

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# 525649 (University OGC# 155229).

The University of Texas Southwestern Medical Center (the "university") received a request for sixteen categories of admissions data on the background and demographic characteristics of applicants to the university during specified admissions cycles, as well as admissions policies explaining how this information is used in admissions decisions. You state the university will release some of the requested information. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.107, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Section 552.103 of the Government Code provides in 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

¹We 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 that those records contain substantially different types of information than that submitted to this office.

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 that claims an exception to disclosure under section 552.103 has the burden of providing relevant facts and documentation sufficient to establish the applicability of this exception to the information at issue. To meet this burden, the governmental body must demonstrate that (1) litigation was pending or reasonably anticipated on the date of its receipt of the request for information and (2) the information at issue is related to the pending or anticipated litigation. *See Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479 (Tex. App.—Austin 1997, orig. proceeding); *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.). Both elements of the test must be met in order for information to be excepted from disclosure under section 552.103. *See* Open Records Decision No. 551 at 4 (1990).

You inform us a lawsuit styled *Fisher v. University of Texas at Austin* is currently pending remand to the lower courts that previously considered the case pursuant to a judgment by the United States Supreme Court. You acknowledge the university, which received the request for information, is not a party to this litigation. *See* Gov't Code § 552.103(a); Open Records Decision No. 575 at 2 (1990) (stating that predecessor to section 552.103 only applies when governmental body is party to litigation). In such a situation, we require an affirmative representation from the governmental body whose litigation interests are at stake that it seeks to withhold the information from disclosure under section 552.103, as well as a demonstration of how that exception applies to the requested information. You inform us the University of Texas at Austin (the "UT Austin") and the University of Texas System (the "system") are parties to the pending litigation. You, as counsel for UT Austin and the system, state the submitted information is directly related to the pending litigation and UT Austin and the system wish to withhold the information. Accordingly, the university may withhold the submitted information under section 552.103 of the Government Code on behalf of UT Austin and the system.²

²As our ruling is dispositive, we need not address your remaining arguments against disclosure.

However, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to all parties to 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 been 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,



Lee Seidlits
Assistant Attorney General
Open Records Division

CLS/tch

Ref: ID# 525649

Enc. Submitted documents

c: Requestor
(w/o enclosures)