



January 29, 2015

Ms. Ana Vieira
Senior Attorney & Public Information Coordinator
Office of the General Counsel
University of Texas System
201 West Seventh Street
Austin, Texas 78701-2902

OR2015-01770

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# 552421 (OGC# 159070).

The University of Texas System (the "system") received a request for information pertaining to a named individual. The system states it does not have some of the requested information.¹ The system also states it will withhold information under section 552.024 of the Government Code and Open Records Decision No. 684 (2009).² The system claims the submitted information is excepted from disclosure under sections 552.103, 552.107, and 552.111 of the Government Code. We have considered the claimed exceptions and reviewed the submitted representative sample of information.³

¹The Act does not require a governmental body to disclose information that did not exist when the request for information was received.

²Section 552.024(c)(2) of the Government Code authorizes a governmental body to redact information protected by section 552.117(a)(1) of the Government Code without the necessity of requesting a decision under the Act if the current or former employee or official to whom the information pertains timely chooses not to allow public access to the information. *See* Gov't Code § 552.024(c)(2). Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of seeking a decision from this office.

³We 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.

Initially, we note you have marked some of the submitted documents as being unresponsive to the request for information. This ruling does not address the public availability of any information that is not responsive to the request, and the system is not required to release this information in response to this request.

Section 552.103 of the Government Code provides in relevant part as follows:

(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 section 552.103 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 from disclosure under section 552.103(a).

You inform us and provide documentation showing a lawsuit was brought against the system on the same day that the system received the request for information: *Saenz v. City of Brownsville, et al.*, No. 2014-DCL-7619-B (138th Dist. Ct., Cameron County, Nov. 7, 2014). Thus, we agree litigation was pending when the system received the request. Furthermore, having reviewed your arguments and representations, we find the submitted responsive information is related to the pending proceedings for purposes of section 552.103. Therefore, the system may withhold the submitted responsive information under section 552.103.⁴

However, once the information has been obtained by all parties to the pending litigation, no section 552.103(a) interest exists with respect to that information. Open Records Decision

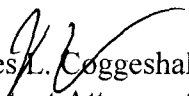
⁴As our ruling is dispositive, we do not address your other arguments to withhold this information.

No. 349 at 2 (1982). We also note the applicability of section 552.103(a) ends when the litigation has concluded. Attorney General Opinion MW-575 at 2 (1982); Open Records Decision Nos. 350 at 3 (1982), 349 at 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,


James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/cbz

Ref: ID# 552421

Enc. Submitted documents

c: Requestor
(w/o enclosures)