



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 1, 2017

Ms. Cynthia Tynan  
Senior Attorney & Public Information Coordinator  
Office of General Counsel  
The University of Texas System  
210 West 7<sup>th</sup> Street  
Austin, Texas 78701-2901

OR2017-24925

Dear Ms. Tynan:

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# 682363 (OGC# 176769).

The University of Texas Medical Branch at Galveston (the "university") received a request for the employee files for two named individuals and an employee evaluation for a specific year. You state you will release some information. You claim portions of the submitted information are not subject to the Act. You claim the remaining submitted information is excepted from disclosure under sections 552.101, 552.103, 552.117, and 552.122 of the

Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>2</sup>

Initially, we note the Act is applicable only to “public information.” Gov’t Code § 552.021. Section 552.002(a) of the Government Code defines “public information” as

information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

(1) by a governmental body;

(2) for a governmental body and the governmental body:

(A) owns the information;

(B) has a right of access to the information; or

(C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or

(3) by an individual officer or employee of a governmental body in the officer’s or employee’s official capacity and the information pertains to official business of the governmental body.

*Id.* § 552.002(a). Thus, virtually all the information in a governmental body’s physical possession constitutes public information and is subject to the Act. *Id.*; see Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). In Open Records Decision No. 581 (1990), this office determined certain computer information, such as source codes, documentation information, and other computer programming, that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property is not the kind of information made public under section 552.021 of the Government Code. We understand the submitted computer identification numbers you have marked are used by hourly employees to clock-in and clock-out via an electronic timekeeping system, and are

---

<sup>1</sup>Although you do not raise section 552.117 in your brief, we understand you to raise this exception based on your markings.

<sup>2</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 that those records contain substantially different types of information than that submitted to this office.

tied to employee ID badges within the security system to provide designated employees with access to secure areas. Based on your representations and our review, we agree the submitted computer identification numbers do not constitute public information for the purposes of section 552.002. Thus, the submitted computer identification numbers are not subject to the Act, and the university is not required to release them in response to the request for information.

Next, we note some of the submitted information may be subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

(15) information regarded as open to the public under an agency's policies[.]

Gov't Code § 552.022(a)(15). The submitted information includes a job description, which is generally open to the public as part of a job posting. If the university regards the submitted job description as open to the public, then this information is subject to subsection 552.022(a)(15), and the university may only withhold the job description if it is made confidential under the Act or other law. You seek to withhold the information at issue under section 552.103 of the Government Code. However, section 552.103 is a discretionary exception and does not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov't Code § 552.103); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Therefore, the information subject to section 552.022 of the Government Code may not be withheld under section 552.103 of the Government Code. As you claim no other exception to the disclosure of the information at issue, if the university regards the job description as open to the public, it must be released. If the university does not regard the job description as open to the public, we will consider your argument under section 552.103 for that information, as well as the remaining information.

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 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 from disclosure under section 552.103(a).

This office has stated a pending complaint with the EEOC indicates litigation is reasonably anticipated. Open Records Decision Nos. 386 at 2 (1983), 336 at 1 (1982). The university states, and has provided documentation showing, that, prior to the university's receipt of the request for information, the requestor filed a complaint against the university with the EEOC. Based on these representations and our review of the submitted documents, we find the university has demonstrated it reasonably anticipated litigation when it received the request for information. We also find the university has established the submitted information is related to the anticipated litigation for purposes of section 552.103(a). Therefore, the university may withhold the submitted information under section 552.103(a) of the Government Code.<sup>3</sup>

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

In summary, the submitted computer identification numbers are not subject to the Act, and the university is not required to release them in response to the request for information. If the university regards the job description as open to the public, the university must release

---

<sup>3</sup>As our ruling is dispositive, we need not address the remaining arguments against disclosure of the submitted information.

it pursuant to subsection 552.022(a)(15) of the Government Code and may withhold the remaining information under section 552.103 of the Government Code. If the university does not regard the job description as open to the public, the university may also withhold the job description under section 552.103 of the Government Code.

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](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,

A handwritten signature in black ink, appearing to read "D. Michelle Case", with a stylized flourish at the end.

D. Michelle Case  
Attorney  
Open Records Division

DMC/som

Ref: ID# 682363

Enc. Submitted documents

c: Requestor  
(w/o enclosures)