



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 28, 1995

Mr. Roland Castaneda
General Counsel
Dallas Area Rapid Transit
P.O. Box 660163
Dallas, Texas 75266-7255

OR95-244

Dear Mr. Castaneda:

You have asked whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 31520.

The Dallas Area Rapid Transit ("Dart") received the following open records request:

Any DART Board resolution, contract, agreement, or other document authorizing or obligating DART to enter into a \$300,000,000.00 credit facility or other instruments such as notes, bonds, commercial paper or the like. Included with this request should be copies of all documents furnished to the DART Board, including drafts of any letters of intent, agreements and any and all correspondence with the Attorney General of the State of Texas.

You have submitted to this office for review representative samples of the records at issue.¹ You contend that the records are excepted from disclosure under section 552.103 of the Government Code.

¹We assume that the "representative sample" of records submitted to this office is truly representative of the responsive records as a whole. See Open Records Decision Nos. 499, 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). This open records letter does not reach any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

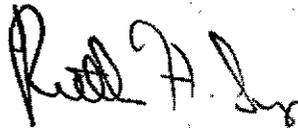
We note initially that some of the records at issue may not be withheld from disclosure. Resolutions of the DART board of directors and other documents that have been disclosed at public meetings may not be withheld from disclosure. Open Records Decision Nos. 221 (1979) at 1 ("official records of the public proceedings of a governmental body are among the most open of records"). The records also contain information relating to the receipt and expenditure of public funds. Government Code section 552.022(3) provides that information relating to the receipt and expenditure of public funds is generally public. If information concerning public funds has been disclosed at a public proceeding, it may not be excepted from disclosure pursuant to section 552.103(a). We conclude that you may not withhold from disclosure under section 552.103(a) the resolutions and other documents that have been disclosed at public meetings.

However, you have demonstrated that section 552.103(a) is applicable to the records at issue that were not publicly disclosed. To secure the protection of section 552.103, a governmental body must demonstrate that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to that litigation. *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 (1990) at 4. You have provided this office a copy of a petition showing that DART has been sued. Our review of the records indicates that they are related to the subject of the pending litigation. These records may therefore be withheld from disclosure.

Generally, once information has been obtained by all of the parties to litigation through discovery or otherwise, no section 552.103 interest exists with respect to that information. Open Records Decision No. 349 (1982) at 2. The applicability of section 552.103 also usually ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982) at 3.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Government Section

Ref: ID# 31520

Enclosures: Submitted documents

cc: Mr. Victor E. Toledo
SMART Board of Directors
P.O. Box 541344
Dallas, Texas 75354
(w/o enclosures)