



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 10, 1995

Ms. Evelyn Johnson
Acting Manager
Contracts and Procurement Department
Capital Metropolitan Transportation Authority
2910 East Fifth Street
Austin, Texas 78702

OR95-1058

Dear Ms. Johnson:

You ask whether certain information is subject to required public disclosure pursuant to chapter 552 of the Government Code. Your request was assigned ID# 32872.

Capital Metropolitan Transportation Authority ("Capital Metro") received an open records request asking for a copy of a letter sent to Capital Metro by which a third party questioned the eligibility of the requestor's client's certification as a disadvantaged business enterprise ("DBE") by Capital Metro. Capital Metro contends that the letter is excepted from required public disclosure pursuant to section 552.103(a) of the Government Code.

Section 552.103(a) applies to information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, 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; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

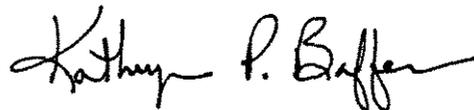
To show that section 552.103(a) is applicable, Capital Metro must demonstrate that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); *Open Records Decision No. 551* (1990) at 4. Section 552.103 requires concrete evidence that the claim that litigation may ensue is more than mere conjecture. *Open Records Decision No. 518* (1989). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. *Open Records Decision No. 452* (1986) at 4.

You state that, after Capital Metro received the letter at issue, Capital Metro initiated an investigation regarding the requestor's client's eligibility to receive its DBE certification by Capital Metro. You state that Capital Metro has notified the requestor's client about its investigation. You inform us that your internal investigation of the requestor's client's DBE status is ongoing. You also inform us that the attorney general has statutory authority to initiate a lawsuit for civil penalties against contractors who submit bids for public contracts and falsely claim DBE status as defined by statute. See V.T.C.S. art. 601(i). You are of the opinion that there exists a possibility that the attorney general may pursue litigation under article 601(i).

Any litigation pursuant to article 601(i) would be between the attorney general for the State of Texas and the requestor's client and would not include Capital Metro. Consequently, you have failed to show that litigation to which Capital Metro would be a party is reasonably anticipated for purposes of section 552.103(a). You must release the letter at issue to the requestor.

We are resolving this matter with this 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 may 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,



Kathryn P. Baffes
Assistant Attorney General
Open Records Division

KPB/RHS/rho

Ref: ID# 32872

Enclosures: Submitted document

cc: Ms. Connie Cornell
The Law Office of Connie Cornell
1327 West Sixth Street
Austin, Texas 78703
(w/o enclosures)