



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 30, 1996

Mr. Roland Castaneda
General Counsel
Dallas Area Rapid Transit
P.O. Box 660163
Dallas, Texas 75266-0163

OR96-0643

Dear Mr. Castaneda:

You ask 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# 38723.

The Dallas Area Rapid Transit ("DART") received a request from a former employee's attorney for certain information concerning another former employee. You have submitted several documents for our review and you contend that the requested information is excepted from required public disclosure under the section 552.103 of the Government Code.

Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state is or may be a party. DART has the burden of providing relevant facts and documents to show that 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, 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. DART must meet both prongs of this test for information to be excepted under section 552.103(a).

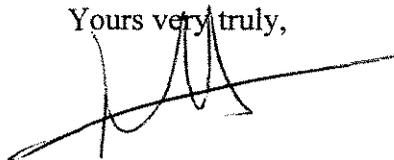
Among the documents submitted to this office for review you include a letter which appears to be a notice of claim along with an unfiled federal complaint petition. By letter of January 31, 1996, the attorney for the claimant states "this letter is written to you for the purpose of presenting a monetary demand to your client for the settlement of the dispute between my client and yours . . . is fully prepared, as am I, to see this litigation through to conclusion, and we have every confidence that we will prevail."

The attorney for DART has determined, on the basis of this notice, that litigation is likely. In our opinion, this determination is reasonable. *See* Open Records Decision Nos. 346 (1982), 289 (1981). That the information at issue is "related" to anticipated litigation involves a more labored inference. DART has not provided sufficient explanation which establishes the relation of the information requested to the litigation. We therefore conclude that DART has not met its burden under the second prong of section 552.103.

However, the Office of the Attorney General will raise mandatory exceptions, but ordinarily only limited to sections 552.101 and 552.117 of the Government Code on behalf of a governmental body. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987). Within the information you submit as responsive to the request we observe that the home phone number of an employee is provided. You must withhold the home addresses and telephone numbers of governmental employees and former employees who have elected, prior to the date of this request, to restrict access to this information in compliance with Government Code section 552.024. *See* Gov't Code § 552.117. You may not, however, withhold the home address or telephone number of an official or employee who made the request for confidentiality under section 552.024 after these requests for information were made. Whether a particular piece of information is public must be determined at the time the request for it is made. Open Records Decision No. 530 (1989) at 5. In conclusion, with the noted exception, DART should release the requested documents to the requestor.

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 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Janet I. Monteros
Assistant Attorney General
Open Records Division

JIM/rho

Ref.: ID# 38723

Enclosures: Submitted documents

cc: Mr. Gregory J. McCarthy
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Dallas, Texas 75225
(w/o enclosures)