



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

October 16, 1998

Ms. Mary D. Marquez  
Assistant to Chief Counsel  
Capital Metropolitan Transportation Authority  
2910 East Fifth Street  
Austin, Texas 78702

OR98-2443

Dear Ms. Marquez:

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# 118949.

The Capital Metropolitan Transportation Authority (the "authority") received two requests for all information relating to the firing of former General Manager Justin Augustine, III. You state that, except for the submitted documents, you have released all responsive information. You claim that the submitted documents are excepted from disclosure under sections 552.103 and 552.107 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.107(1) excepts from disclosure information that an attorney cannot disclose because of a duty to his client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107(1) excepts from public disclosure only "privileged information," that is, information that reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinions; it does not apply to all client information held by a governmental body's attorney. Open Records Decision No. 574 at 5 (1990). When invoking this exception, the governmental body bears the burden of explaining how the particular information requested constitutes either a client confidence or a communication of legal advice or opinion. *See, e.g.*, Open Records Decision No. 589 (1991). In this instance, you have not shown how this section applies to the submitted documents. Consequently, you may not withhold the submitted documents under section 552.107(1).

Section 552.103(a) of the Government Code excepts from disclosure 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.

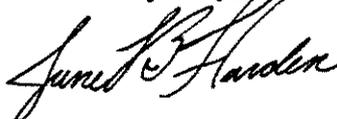
The authority has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related 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 at 4 (1990). The authority must meet both prongs of this test for information to be excepted under 552.103(a).

In this instance, you state that litigation between the authority and General Augustine is pending. You have also submitted copies of the relevant pleadings for our review. We conclude that litigation is pending and that the documents submitted by the authority are related to the litigation for the purposes of section 552.103(a). Therefore, the submitted documents may be withheld from disclosure.

Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



June B. Harden  
Assistant Attorney General  
Open Records Division

Ref.: ID# 118949

Enclosures: Submitted documents

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