



August 9, 1999

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

OR99-2232

Dear Mr. Castaneda:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 126341.

The Dallas Area Rapid Transit ("Dart") received a request for information related to Rocola Concrete Tie, Inc. You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. You have submitted the responsive information to this office for review. We have considered the exception you claim and reviewed the submitted information.

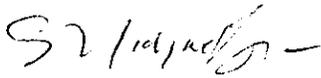
Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state or a political subdivision is or may be a party. To secure the protection of section 552.103(a), a governmental body has the burden of providing relevant facts and documents to show 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 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.). In this case, you have supplied copies of pleadings in the lawsuit *Azteca Enterprises, Inv. v. Dallas Area Rapid Transit*, No. 399CVO281-P (N.D. Tex. - filed Feb 9, 1999). You represent that this case is pending. From our review of the subject information, we conclude that this information relates to the pending litigation. You may therefore withhold the information under section 552.103(a) of the Government Code.

Note however, that absent special circumstances, where the opposing party to the litigation has had access to the records at issue, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). If the opposing

parties in the pending litigation have seen or had access to any of the information in these records, there is no justification for now withholding that information from the requestor pursuant to section 552.103(a). Also note that 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 upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/ch

Ref: ID# 126341

Encl. Submitted documents

cc: Mr. Miguel Coindreau
Azteca Enterprises, Inc.
3818 Ruder
Dallas, Texas 75202
(w/o enclosures)