



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 8, 2008

Ms. Alva I. Trevino
Deputy General Counsel
Metropolitan Transit Authority of Harris County
1900 Main, Third Floor
Houston, Texas 77002

OR2008-12281

Dear Ms. Trevino:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 321032.

The Metropolitan Transit Authority of Harris County ("METRO") received 38 separate requests, from the same requestor, for information relating to stray current and METRO's Corrosion Committee, specifically: (1) the most recent list of METRORail accidents for a specified day from June 13, 2008 to July 20, 2008, (2) any new information concerning stray current, (3) any new information regarding the METRO Corrosion Committee meeting scheduled to be held in fiscal year 2008, and (4) any new communications between METRO and the FTA concerning the commuter and urban rail. Another request from the same requestor seeks Q-card revenue from July 1, 2008 to July 3, 2008. You claim the submitted information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See Gov't Code § 552.304* (interested party may submit comments stating why information should or should not be released).

Initially, we note you have only submitted information responsive to items 2 and 3 of the requests. You have not submitted any information responsive to item 1 or 4 or the request for Q-card revenue information. Further, you have not indicated you have released or will release this information or you wish to withhold this information from disclosure. Therefore, to the extent information responsive to these parts of the requests existed on the date

METRO received the requests, we assume METRO has released it to the requestor. If METRO has not released any such information, METRO must release it to the requestor at this time. See Gov't Code §§ 552.301(a), .302.

We now turn to your claimed exception for the submitted information. Section 552.103 of the Government Code provides in relevant part as follows:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature 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.

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Id. § 552.103(a), (c). A governmental body 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 was pending or reasonably anticipated on the date that the governmental body received the request for information, and (2) the information at issue is related to that litigation. *Thomas v. Cornyn*, 71 S.W.3d 473, 487 (Tex. App.—Austin 2002, no pet.); *Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, no pet.); *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). A governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

You inform us the submitted information relates to pending litigation, in which METRO is a defendant. You state and provide documentation showing that Cause No. 2008-26962 was pending in the 295th Judicial District Court of Harris County, Texas on the date METRO received the requests for information. Based on your representations and our review of the submitted information, we determine that section 552.103 is generally applicable in this instance.

We note, however, that the purpose of section 552.103 is to enable a governmental body to protect its position in litigation by forcing parties to obtain information relating to litigation through discovery procedures. See Open Records Decision 551 at 4-5 (1990). 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. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing parties, or its representatives, is not excepted from disclosure under section 552.103(a) and must be disclosed. Upon review of the submitted information, it appears that representatives of the plaintiffs in the pending litigation have already had access to most of the information METRO seeks to withhold. Therefore, METRO may only withhold the submitted information under section 552.103 to the extent the opposing parties, or their representatives, have not seen or had access to the information. Further, we note the applicability of section 552.103(a) ends once the litigation has concluded. *See* Attorney General Opinion MW-575 (1982); *see also* Open Records Decision No. 350 (1982).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). If the governmental body does not file suit over this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

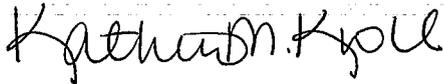
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can challenge that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be

sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Katherine M. Kroll
Assistant Attorney General
Open Records Division

KMK/eeg

Ref: ID# 321032

Enc. Submitted documents

c: Mr. Thomas A. Bazan
P.O. Box 2786
Houston, Texas 77252
(w/o enclosures)