



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 19, 2009

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

OR2009-06777

Dear Mr. Simmons:

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# 343823.

Dallas Area Rapid Transit ("DART") received a request for specified correspondence with the Texas Workforce Commission ("TWC"), a specified 941 or 940 transcript tape submitted to the IRS, and all copies of "UI benefits DART paid back to TWC on reinstatement of all employees" for a specified time period. You state that DART does not have any information responsive to the request for the 941 or 940 transcript tape.¹ You claim that the submitted information is excepted from disclosure under sections 552.103 and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed 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

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

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.

Gov't Code § 552.103(a), (c). The governmental body has the burden of providing relevant facts and documents sufficient to establish the applicability of section 552.103 to the information that it seeks to withhold. To meet this burden, the governmental body must demonstrate: (1) that litigation was pending or reasonably anticipated on the date of its receipt of the request for information and (2) that the information at issue is related to that litigation. See *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); see also Open Records Decision No. 551 at 4 (1990). Both elements of the test must be met in order for information to be excepted from disclosure under section 552.103. *Id.*

You inform us, and provide documentation showing, that prior to DART's receipt of this request for information, a lawsuit was filed against DART and is currently pending in the 193rd Judicial District, District Court of Dallas County, Texas. We therefore agree that litigation was pending when DART received the instant request for information. Furthermore, having reviewed your arguments and representations, we find that the submitted information is related to the pending litigation for purposes of section 552.103. Therefore, DART may withhold the submitted information pursuant to section 552.103 of the Government Code.²

We note, however, that once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103 interest exists with respect to that information. See Open Records Decision Nos. 349 (1982), 320 (1982). We also note that section 552.103 is no longer applicable to this information once the related litigation concludes. See Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

²As our ruling is dispositive, we do not address your remaining argument against disclosure of portions of the submitted information.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Laura E. Ream
Assistant Attorney General
Open Records Division

LER/dls

Ref: ID# 343823

Enc. Submitted documents

c: Requestor
(w/o enclosures)