



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 7, 2010

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

OR2010-00312

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# 366526 (DART ORR #6910).

Dallas Area Rapid Transit ("DART") received a request for a specified incident report. You claim that 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.

Section 552.103 of the Government Code provides in part:

(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.

Gov't Code § 552.103(a), (c). 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 was pending or reasonably anticipated on the date of the university's receipt of the request, and (2) the information at issue is related to that litigation. *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). DART must meet both prongs of this test for information to be excepted under section 552.103(a).

To establish litigation is reasonably anticipated, a governmental body must provide this office "concrete evidence showing that the claim that litigation may ensue is more than mere conjecture." Open Records Decision No. 452 at 4 (1986). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. *Id.* This office has concluded that a governmental body's receipt of a claim letter that it represents to be in compliance with the notice requirements of the Texas Tort Claims Act, chapter 101 of the Civil Practice and Remedies Code, is sufficient to establish that litigation is reasonably anticipated.

You assert and provide documentation that DART received a claim letter from the requestor pertaining to an incident which occurred on a DART bus, where his client was allegedly injured. You state that the requestor sent the claim letter as proper notice of the claim pursuant to the requirements of the Texas Tort Claims Act. However, because DART received this letter after the date of its receipt of the request for information, you have not demonstrated the requestor had taken concrete steps towards litigation at the time of DART's receipt of the instant request. Thus, we find you have failed to establish DART reasonably anticipated litigation when it received this request for information. Accordingly, we conclude none of the submitted information may be withheld under section 552.103. As no further exceptions against its disclosure are raised, the submitted information must be released.

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](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, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in cursive script that reads "Laura Ream Lemus".

Laura Ream Lemus  
Assistant Attorney General  
Open Records Division

LRL/jb

Ref: ID# 366526

Enc. Submitted documents

c: Requestor  
(w/o enclosures)