



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 19, 2010

Ms. Beth Vidaurri  
Public Information Officer  
Corpus Christi Regional Transportation Authority  
5658 Bear Lane  
Corpus Christi, Texas 78405

OR2010-17571

Dear Ms. Vidaurri:

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# 400736.

The Corpus Christi Regional Transportation Authority (the "authority") received a request for any video, motion, or still pictures available from on-board recording devices from a bus involved in a specified accident. You claim that the submitted information is excepted from disclosure under sections 552.103 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments submitted by the requestor. Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note that some of the submitted information is not responsive to the instant request for information. The requestor only seeks video, motion, or still pictures available from on-board recording devices from a bus involved in a specified accident. Therefore, any information that does not consist of video, motion, or still pictures available from on-board recording devices from the bus at issue is not responsive. This ruling does not address the public availability of any information that is not responsive to the request, and the authority need not release that information in response to the request.

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). The 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 is pending or reasonably anticipated on the date that the department received the request for information, 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). The governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

To establish that 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.* In Open Records Decision No. 638 (1996), this office stated that a governmental body has met its burden of showing that litigation is reasonably anticipated when it received a notice of claim letter and the governmental body represents that the notice of claim letter is in compliance with the requirements of the Texas Tort Claims Act (“TTCA”), Civ. Prac. & Rem. Code, ch. 101, or an applicable municipal ordinance. If a governmental body does not make this representation, the claim letter is a factor that this office will consider in determining whether a governmental body has established that litigation is reasonably anticipated based on the totality of circumstances.

You state the authority anticipates that several of the injured passengers and the occupants of the other vehicles involved in the accident at issue may file a civil action against the authority for property damages and personal injuries. You explain that, on September 7, 2010, the authority received a claim notice by telephone from one of the individuals involved in the accident. You do not represent that this telephone call was in compliance with the notice requirements of the TTCA. Further, you have not otherwise demonstrated that individual at issue had taken any concrete steps towards litigation on the date the request was received. *See* Open Records Decision No. 331 (1982). You also inform us, and provide documentation showing, that on September 8, 2010, the authority received a notice of claim letter, that was in compliance with the TTCA, from an attorney representing three of the individuals involved in the accident at issue. However, we note the request for information was received on September 7, 2010, one day before the notice of claim was received. Accordingly, we find the authority has failed to establish that it reasonably anticipated

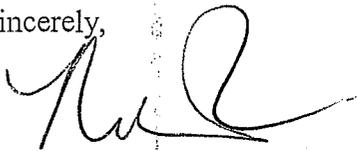
litigation on the date it received the request for information. Therefore, the authority may not withhold the requested information under section 552.103.

Section 552.130 of the Government Code excepts from disclosure "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state[.]" Gov't Code § 552.130. We note that Texas license plate numbers are discernible on cameras 3 and 8. To the extent that discernible Texas license plate numbers are visible in the requested video recording, the authority must withhold this information under section 552.130 of the Government Code.<sup>1</sup> The remaining 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,



Nneka Kanu  
Assistant Attorney General  
Open Records Division

NK/em

Ref: ID# 400736

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)

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<sup>1</sup>We note this office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including any portion of any video depicting a discernible Texas license plate number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.