



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 10, 2011

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

OR2011-02078

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# 408707 (DART ORR 7839).

Dallas Area Rapid Transit ("DART") received a request for a certified copy of the police report, along with any pictures and witness information, for a specified incident. You state some information has been released to the requestor. You have redacted portions of photographs that reveal Texas license plate numbers as permitted by Open Records Decision No. 684 (2009).<sup>1</sup> You claim that the remaining requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the claimed exception and reviewed the submitted information.

Section 552.103 of the Government Code provides, in relevant 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

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<sup>1</sup> Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including the portion of a photograph that reveals a Texas license plate number under section 552.130 of the Government Code, without the necessity of requesting an opinion from this office.

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). A governmental body has the burden of providing relevant facts and documents to show that the section 552.103(a) exception applies in a particular situation. The test for meeting this burden is a showing that (1) litigation was pending or reasonably anticipated on the date the governmental body received the request for information, and (2) the requested information is related to that litigation. *See 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 parts of this test for information to be excepted under section 552.103(a). *See* ORD 551 at 4.

The question of whether litigation is reasonably anticipated must be determined on a case-by-case basis. *See* Open Records Decision No. 452 at 4 (1986). To demonstrate litigation is reasonably anticipated, the governmental body must furnish concrete evidence that litigation involving a specific matter is realistically contemplated and is more than mere conjecture. *Id.* Concrete evidence to support a claim that litigation is reasonably anticipated may include, for example, the governmental body's receipt of a letter containing a specific threat to sue the governmental body from an attorney for a potential opposing party. Open Records Decision No. 555 (1990); *see* Open Records Decision No. 518 at 5 (1989) (litigation must be "realistically contemplated"). On the other hand, this office has determined that if an individual publicly threatens to bring suit against a governmental body, but does not actually take objective steps toward filing suit, litigation is not reasonably anticipated. Open Records Decision No. 331 (1982). Further, the fact that a potential opposing party has hired an attorney who makes a request for information does not establish that litigation is reasonably anticipated. Open Records Decision No. 361 (1983).

You assert the submitted "Claimant's Telephone Report" filed by one potential opposing party, and the letter of representation from the attorney representing another potential opposing party, demonstrate DART reasonably anticipated litigation regarding the accident at issue at the time DART received the instant request for information. We note, however, the submitted telephone report demonstrates only that an involved party notified DART by

telephone call of the death resulting from the accident at issue. Further, as noted above, the fact that an attorney representing a potential opposing party requested information, without more, does not establish that DART reasonably anticipated litigation. You have not otherwise demonstrated that any of the individuals at issue had taken any concrete steps towards litigation on the date the request was received. *See* Open Records Decision No. 331 (1982). Thus, we find you have failed to demonstrate that DART reasonably anticipated litigation when the request for information was received. *See* Gov't Code §§ 552.103(c) (governmental body must demonstrate that litigation was pending or reasonably anticipated on or before the date it received request for information); .301(e)(1) (requiring governmental body to explain applicability of raised exception). Accordingly, DART may not withhold any of the submitted information under section 552.103. As you raise no further exceptions for this information, it must be released to the requestor.

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,



Misty Haberer Barham  
Assistant Attorney General  
Open Records Division

MHB/eeg

Ref: ID # 408707

Enc. Submitted documents

c: Requestor  
(w/o enclosures)