



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

June 22, 2011

Mr. Thomas Bailey
Legal Services
VIA Metropolitan Transit
P.O. Box 12489
San Antonio, Texas 78212

OR2011-08856

Dear Mr. Bailey:

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# 421587.

VIA Metropolitan Transit ("VIA") received a request for the "[c]omplete bus manifest as well as any video" for a bus involved in an accident that occurred on March 13, 2011. 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 note the submitted information is not responsive to the instant request. The requestor seeks video pertaining to an accident that occurred on March 13, 2011, and the bus manifest from the unit involved. The submitted information consists of a video from a bus recorded on February 27, 2010, and it does not pertain to the accident specified in the request. VIA need not release non-responsive information in response to this request, and this ruling will not address that information.

Pursuant to section 552.301(e) of the Government Code, a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. In this

instance, you have not submitted any information pertaining to the requested information. Consequently, we find that VIA failed to comply with the requirements of section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to submit to this office the information required in section 552.301(e) results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). Section 552.103 is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Record Decision Nos. 665 at 2 n.5 (discretionary exceptions generally). In failing to comply with section 552.301, VIA has waived its claim under section 552.103. Thus, to the extent that any information responsive to the request exists, VIA must release it at this time. *See Gov't Code §§ 552.301, .302; see also Open Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible under circumstances).*

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, toll free at (888) 672-6787.

Sincerely,



Sean Nottingham
Assistant Attorney General
Open Records Division

SN/bs

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Enc. Submitted documents

c: Requestor
(w/o enclosures)