



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 14, 2011

Ms. Jacqueline Hojem
Public Information Coordinator
Metropolitan Transit Authority
P.O. Box 61429
Houston, Texas 77208-1429

OR2011-14979

Dear Ms. Hojem:

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# 433196 (MTA No. 2011-0309).

The Metropolitan Transit Authority ("METRO") received a request for information pertaining to sexual harassment/discrimination lawsuits, reprimands and grievances filed by the requestor, and information pertaining to certain employees for specified periods of time.¹ 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.²

Initially, we note the submitted information includes court filed documents subject to disclosure under section 552.022 of the Government Code. Section 552.022(a)(17) provides for required public disclosure of "information that is also contained in a public court record,"

¹We note METRO sought and received clarification of the request for information. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

²We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and, therefore, does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

unless the information is expressly confidential under other law. *See* Gov't Code § 552.022(a)(17); *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54 (Tex. 1992). Although you seek to withhold this information under section 552.103 of the Government Code, that section 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 Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). As such, section 552.103 is not other law that makes information expressly confidential for the purposes of section 552.022(a)(17). Accordingly, the information subject to section 552.022(a)(17), which we have marked, may not be withheld on the basis of section 552.103. As no further exceptions to disclosure have been raised for this information, it must be released.

You assert the information not subject to section 552.022 is excepted from disclosure under section 552.103 of the Government Code, which provides in 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.

Gov't Code § 552.103(a), (c). The governmental body has the burden of providing relevant facts and documents to show 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 the governmental body 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 from disclosure under section 552.103(a).

You explain that the requestor filed a sexual discrimination and sexual harassment complaint with the Equal Employment Opportunity Commission (the "EEOC") in 2006, which resulted

in the requestor filing suit against METRO.³ You also inform us the requestor has a pending lawsuit against METRO: *Adeshile v. Metropolitan Transit Authority of Harris County, Texas*, Cause No. 2010-66501, District Court, 61st Judicial District, Harris County, Texas, pertaining to alleged retaliation by METRO against the requestor based upon her prior EEOC claim and the subsequent lawsuit. Based on these representations and our review of the submitted information, we determine litigation involving METRO was pending when METRO received the request. We also find the information at issue relates to the pending litigation for purposes of section 552.103. Accordingly, we agree METRO may withhold, pursuant to section 552.103 of the Government Code, the submitted information that is not subject to section 552.022.

We note, however, once the information has been obtained by all parties to the pending litigation, no section 552.103(a) interest exists with respect to that information. Open Records Decision No. 349 at 2 (1982). We also note the applicability of section 552.103(a) ends when the litigation has concluded or is no longer anticipated. Attorney General Opinion MW-575 (1982) at 2; Open Records Decision Nos. 350 at 3 (1982), 349 at 2.

In summary, METRO must release the information we have marked under section 552.022 of the Government Code. METRO may withhold the remaining information under section 552.103 of the Government Code.

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,



Paige Lay
Assistant Attorney General
Open Records Division

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³We note that lawsuit was dismissed in 2008 pursuant to a final order granting summary judgment against the requestor, and the requestor has not appealed that order.

Ref: ID# 433196

Enc. Submitted documents

cc: Requestor
(w/o enclosures)