



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

July 28, 1995

Ms. Evelyn Johnson  
Acting Manager  
Materials Management  
Capital Metropolitan  
Transportation Authority  
2910 East Fifth Street  
Austin, Texas 78702

OR95-716

Dear Ms. Johnson:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 33600.

The Capital Metropolitan Transportation Authority ("Capital Metro") received an open records request for various records, including Capital Metro employees' personnel files and grievances, that you contend come within the protection of section 552.103(a) of the Government Code.<sup>1</sup> To secure the protection of section 552.103(a), a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation to which the governmental body is a party. Open Records Decision No. 588 (1991) at 1. The mere chance of litigation will not trigger section 552.103(a). Open Records Decision No. 452 (1986) at 4 and authorities cited therein. To demonstrate that 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.*

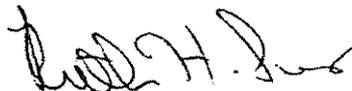
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<sup>1</sup>We note that you indicate one of the grievances is a "sexual harassment" complaint, but our review of those records does not indicate it as such. Additionally, none of the information pertaining to that grievance would be excepted from disclosure under common-law privacy. See *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied); *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), cert. denied, 430 U.S. 931 (1977). We agree, however, that the categories of information you laid out in footnote 3 of your brief to this office must be withheld from the requestor pursuant to sections 552.102(a) and 552.117(1)(a) of the Government Code.

We note that a requestor's motives and any speculation concerning the requestor's motives are not relevant to an inquiry under chapter 552. Gov't Code § 552.222 (governmental body is prohibited from inquiring into requestor's motives); Open Records Decision No. 542 (1990) at 4. This office has concluded that a reasonable likelihood of litigation exists when an attorney makes a written demand for damages and promises further legal action if such is not forthcoming. Open Records Decision No. 551 (1990). However, in Open Records Decision No. 361 (1983), we determined that litigation was not reasonably anticipated where an applicant who was rejected for employment hired an attorney who as part of his investigation sought information about that rejection. In that situation and the one at hand, records have been sought under the Open Records Act but there have been no threats of litigation. Accordingly, we conclude that section 552.103 is inapplicable in this instance.<sup>2</sup> Because you have raised none of the act's other exceptions with regard to the requested information (except for the confidential information listed in footnote 3 of your brief, which must be withheld from disclosure), Capital Metro must release the requested information.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy  
Assistant Attorney General  
Open Government Section

RHS/RWP/rho

Ref.: ID# 33600

Enclosures: Submitted documents

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<sup>2</sup>We note that although you contend that the fact that the requestor's client has threatened to file a grievance with the Federal Transit Administration ("FTA") regarding her complaints is sufficient to show the likelihood of future litigation, *cf.* Open Records Decision No. 386 (1983) (pendency of complaint before the EEOC indicates substantial likelihood of litigation), you not have presented to this office a copy of that complaint or any other evidence that such a complaint has actually been filed. However, assuming that the requestor's client in fact has filed a complaint with the FTA, you have not demonstrated why this office's rationale in Open Records Decision No. 386 (1983) would apply in this particular instance.

cc: Mr. William "Rusty" Hubbarth  
Attorney at Law  
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Austin, Texas 78746  
(w/o enclosures)