



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 29, 1995

Mr. Justin Augustine, III
Assistant General Manager
Capital Metropolitan Transportation Authority
2910 East 5th Street
Austin, Texas 78702

OR95-1297

Dear Mr. Augustine:

You ask whether certain information is subject to required public disclosure under the Texas Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 36789.

The Capital Metropolitan Transportation Authority ("Capital Metro") has received a request for a list of information relating to Capital Metro bus accidents between January 1, 1993 and October 17, 1995. Capital Metro has made available most of the requested information to the requestor. However, Capital Metro contends that a list of claims for certain accidents which have been submitted to Capital Metro's insurance carrier but which have not been settled is exempted from required public disclosure pursuant to section 552.103 of the Government Code. You have submitted that list to this office for our review.

Section 552.103(a) applies to information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, 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; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

To show that section 552.103(a) is applicable, Capital Metro must demonstrate that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to that litigation. *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 (1990) at 4. Section 552.103 requires concrete evidence that the claim that litigation may ensue is more than mere conjecture. Open Records Decision No. 518 (1989). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 (1986) at 4.

You claim that litigation is reasonably anticipated because (1) the claims are based on vehicle accidents; (2) the claims are made for damages and/or injuries suffered in those accidents; and (3) Capital Metro's insurer has not settled the claims with the claimants. You also claim that releasing information relating to these claims will prejudice the ability of Capital Metro's insurer to settle these claims without litigation. In your letter dated October 30, 1995, you claim that the list includes information on the amount of reserves set aside by Capital Metro's insurer for each claim. However, in a conversation with one of your representatives, you informed us that that information had been redacted from the list submitted to this office.¹

Initially, we conclude that Capital Metro has failed to meet the requisite showing that litigation is reasonably anticipated. This office has concluded that a reasonable likelihood of litigation exists when an attorney makes a written demand for disputed payments and promises further legal action if they are not forthcoming, *see* Open Records Decision No. 551 (1990), and when a person hires an attorney who then asserts an intent to sue, *see* Open Records Decision No. 555 (1990). However, you have not submitted to this office copies of any claims submitted or other information showing that any of these claimants have hired an attorney or have even asserted an intent to sue. Because we conclude that litigation is not reasonably anticipated, you must release the information withheld to the requestor.²

¹ Because the reserves set aside for each claim by Capital Metro's insurer were not specifically requested and are, therefore, not responsive to the open records request, we do not address in this ruling whether that information may be withheld under section 552.103.

² We also note that much, if not all, of the information on the list has more than likely been seen or is already known by the opposing parties to any future litigation. *See* Open Records Decision No. 551 (1988) at 4.

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 may 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,

A handwritten signature in black ink that reads "Todd Reese". The signature is written in a cursive style with a long horizontal line extending to the right.

Todd Reese
Assistant Attorney General
Open Records Division

RTR/rho

Ref.: ID# 36789

Enclosures: Submitted documents

cc: Mr. Ryan Serber
Reporter
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(w/o enclosures)