



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 27, 1996

Mr. Roland Castaneda
General Counsel
Dallas Area Rapid Transit
P.O. Box 660163
Dallas, Texas 75266-0163

OR96-1030

Dear Mr. Castaneda:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 40478.

The Dallas Area Rapid Transit ("DART") received a request for:

1. Copies of all documents retrieved out of Customer Service;
2. Copies of all documents retrieved out of Patrick Rucker's personal or personnel file;
3. A statement of the exact allegations made against Customer Service supervisors;
4. The name(s) of the individuals that made the allegations in 3. above; and
5. A statement clarifying what the PIC is "reviewing".

The requestor also seeks "the names of the individuals conducting the investigation, and in particular, the documents or materials utilized in the field where citizens or friends of Mr. Rucker have been asked direct questions regarding the unestablished or unproven allegations." You state that some of the requested information has been made available to the requestor. However, you claim that other responsive information is excepted from disclosure under sections 552.103 and 552.107(1) of the Government Code. We have considered the exceptions you claimed and have reviewed the documents at issue.

Section 552.107(1) excepts information that an attorney cannot disclose because of a duty to his client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107 excepts from public disclosure only "privileged information," that is,

information that reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinions; it does not apply to all client information held by a governmental body's attorney. Open Records Decision No. 574 (1990) at 5. As to the first document submitted in Attachment "C," you have not established who wrote the notes or how they reflect attorney-client communications. Therefore, you may not withhold the first document submitted in Attachment "C" under section 552.107(1).

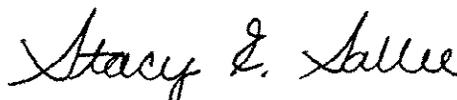
As to the second document submitted in Attachment "C," it is a clearly a communication from an attorney to DART employees. However, we find that some of the information is purely factual and, consequently, may not be withheld under section 552.107(1). Some of the information appears to be a privileged attorney-client communication and may be withheld under section 552.107(1). We have marked the information that may be withheld under this exception.

Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state is or may be a party. DART has the burden of providing relevant facts and documents to show that 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, 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. DART must meet both prongs of this test for information to be excepted under section 552.103(a).

You have submitted a complaint filed in federal court against DART by Cynthia Turner, establishing the first prong of the section 552.103 test. We have reviewed the document submitted as Attachment "D" and conclude that it is related to the pending litigation. Therefore, DART may withhold the document submitted as Attachment "D" under section 552.103.

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 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee
Assistant Attorney General
Open Records Division

SES/ch

Ref: ID# 40478

Enclosures: Marked documents

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(w/o enclosures)