



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

September 10, 1998

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

OR98-2151

Dear Mr. Castañeda:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 117924 and ID# 118022.

Dallas Area Rapid Transit ("DART") received a request for "a complete and exact photocopy of the entire settlement agreement between [Roger Roberts and DART]" and "a complete and exact photocopy of the settlement check, front and back, written by DART on or about June 2, 1995 and made payable to Roger Roberts and/or Halpern & Martin." You contend that the requested information is excepted from disclosure under sections 552.103 and 552.107(2) of the Government Code. You also argue that the requested information is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 154.073(b) of the Civil Practice and Remedies Code. We have considered the exceptions you claim and have reviewed the information at issue.

Section 552.103(a) of the Government Code excepts from disclosure information relating to litigation to which a governmental body is or may be a party. The governmental body has the burden of providing relevant facts and documents to show that section 552.103(a) is applicable in a particular situation. In order to meet this burden, the governmental body must show 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. You have submitted to this office a copy of the Plaintiff's Original Petition from a pending lawsuit, *Penelope Y. Lary v. Dallas Area Rapid Transit et. al.*, No. 95-10963-J (191<sup>st</sup> Dist. Ct., Dallas County, Tex., filed Oct. 16, 1995). Having reviewed the petition, we agree that the requested information relates to the pending lawsuit. Accordingly, we conclude that DART may withhold the information from disclosure under

section 552.103(a) of the Government Code. *See* Open Records Decision No. 658 (1998) (Government Code section 552.101, in conjunction with Civil Practice and Remedies Code section 154.073, does not except governmental body's mediated final settlement agreement from disclosure, but other exceptions to disclosure may apply to settlement agreement).

In reaching this conclusion, however, we assume that the opposing party in the pending litigation has not previously had access to the information at issue; absent special circumstances, once information has been obtained by all parties to the litigation, *e.g.*, through discovery or otherwise, no section 552.103 interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). If the opposing party in the litigation has seen or had access to any of the information, there would be no justification for now withholding that information from the public pursuant to section 552.103. We also note that the applicability of section 552.103 ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).<sup>1</sup>

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,



Karen E. Hattaway  
Assistant Attorney General  
Open Records Division

KEH/mjc

Ref: ID# 117924 & ID# 118022

Enclosures: Submitted documents

cc: Ms. Penelope Y. Lary  
11536 W. Ricks Circle  
Dallas, Texas 75230  
(w/o enclosures)

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<sup>1</sup>Because we are able to resolve this matter under section 552.103, we do not address your section 552.107(2) claim at this time.