



March 8, 1999

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

OR99-0644

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# 122686.

Dallas Area Rapid Transit (the "DART") received a request for documents that this office ruled upon in Open Records Letter No. 98-2588 (1988). You state that you have released these documents to the requestor. The requestor also seeks a copy of Larry Campbell's Form PA 36 from January 1, 1998 to December 1, 1998, the date of the request letter.<sup>1</sup> You contend that the requested information is excepted from disclosure pursuant to section 552.103 of the Government Code.

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. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (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). DART must meet both prongs of this test for information to be excepted under section 552.103(a).

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<sup>1</sup>You explain that due to DART's conversion to a new software system, Form PA 36, a form that lists the dates of an employee's absences and the reason for the absence, is no longer available, but that the same information exists in a report called TM 70.1. You assume that "the requestor seeks attendance/absence information, regardless of the title of the form on which it is made available."

You have submitted a copy of the petition from a pending lawsuit. We have reviewed your arguments and conclude that you have shown that litigation is pending. The litigation involves allegations of sexual harassment by Larry Campbell between May 1996 and March 1998. You assert that "details of [Mr. Campbell's] employment since January 1, 1998, including his work attendance, are related to the issues in the litigation. Mr. Campbell's attendance or absence from work on specific dates is related to whether he was in fact 'an agent of Defendant DART, and was acting within the course and scope of his employment' as alleged on page two of the complaint." We conclude that you have shown that the requested information is related to the issues in the pending litigation only as to the attendance records from May 1996 to March 1998. Accordingly, you may withhold such information under section 552.103. However, you have not shown how the attendance information after March 1998 relates to the pending litigation. Thus, you must release the attendance information subsequent to March 1998.

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 any questions about this ruling, please contact our office.

Sincerely,



Yen-Ha Le  
Assistant Attorney General  
Open Records Division

YHL/nc

Ref: ID# 122686

Enclosures: Submitted documents

cc: Mr. Kenneth Kirk  
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(w/o enclosures)