



July 6, 1999

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

OR99-1884

Dear Mr. Castañeda:

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# 126817.

The requestor contends that the Dallas Area Rapid Transit ("DART") failed to request a decision from this office within the statutory deadline. A governmental body that wishes to withhold information it considers to be within one of the Act's exceptions must ask for an attorney general decision within ten business days after the governmental body's receipt of the written request for information. Gov't Code § 552.301. DART received the request for information on May 20, 1999. DART submitted a request for a ruling and asserted its exceptions on June 2, 1999. The ten-business-day deadline for seeking a decision from this office is June 4, 1999. Thus, DART's request for a ruling was timely under section 552.301, and the requested information is not presumed to be public.

You assert that section 552.103 of the Government Code excepts from disclosure the requested information. Section 552.103(a) of the Government Code reads as follows:

(a) Information is excepted from [required public disclosure] if it is 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

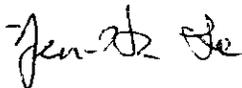
(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

A governmental body has the burden of providing relevant facts and documents to show the applicability of an exception in a particular situation. The test for establishing that section 552.103(a) applies is a two-prong 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 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 588 (1991). In this instance, you have made the requisite showing that the requested information relates to litigation for purposes of section 552.103(a).¹ The requested records therefore may be withheld from public disclosure.

However, we note that some of the documents were obtained from the opposing party or that the opposing party has had access to some of the records. If the opposing party in the litigation has seen or had access to any of the information in these records, there is no section 552.103(a) interest in withholding that information from the requestor. Open Records Decision Nos. 349 (1982), 320 (1982). In addition, the applicability of section 552.103(a) ends once the litigation concludes. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

In light of our conclusion under section 552.103(a), we need not address the applicability of other exceptions, if any. We are resolving this matter with this 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 regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/eaf

¹If a governmental body submits to this office a "representative sample" of the requested records, we assume that the sample submitted is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). When a representative sample of the requested information is submitted to this office, the open records letter ruling does not reach, and therefore does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Ref.: ID# 126817

Encl. Submitted documents

cc: Mr. Gaines Smith
President
Ironhorse, Ltd.
P.O. Box 20207
Saint Simons Island, Georgia 31522
(w/o enclosures)