



June 29, 2000

Ms. Mary D. Marquez  
Assistant to Chief Counsel  
Capital Metropolitan Transportation Authority  
2910 East 5th Street  
Austin, Texas 78702

OR2000-2468

Dear Ms. Marquez:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 136643.

Capital Metropolitan Transportation Authority (“CMTA”) received public information requests from two individuals, Mr. Robert Baker and Mr. Gregory Kaskie. Mr. Baker has requested six items, five of which you explain have been disclosed. The remaining item that you have not yet disclosed is a request for the minutes and cover sheets for “all pension plan meetings” for the last two years. Mr. Kaskie’s request is for the same information regarding the pension plan meetings. Therefore, we address both requests in this single letter ruling. You have submitted the responsive information for our review. You argue the information is excepted from public disclosure pursuant to Government Code sections 552.101 and 552.107. We have considered the exceptions you claim and reviewed the submitted information.

First, we address your claim under Government Code section 552.101. Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” You argue that you are entitled to withhold the information, in its entirety, because the committee is under an ERISA Pension Plan which, you argue, preempts state law. You have submitted a letter from an attorney who represents CMTA which provides advice regarding the information at issue. The letter concludes that ERISA’s disclosure obligations do not mandate disclosure of committee minutes. However, neither your brief nor the attorney’s letter directs us to an ERISA provision which *prohibits* the disclosure of the information. Therefore, we conclude that you have not established that ERISA preempts chapter 552 of the Texas Government Code in regards to the public disclosure of the information. Accordingly, you may not withhold the

information based on this argued exception.

Next, we address your section 552.107 claim. Subsection 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. *Id.* at 5. When communications from attorney to client do not reveal the client’s communications to the attorney, section 552.107 protects them only to the extent that such communications reveal the attorney’s legal opinion or advice. *Id.* at 3. In addition, basically factual communications from attorney to client, or between attorneys representing the client, are not protected. *Id.*

You state that the Pension Administration Committee holds monthly meetings during which the committee receives legal advice from an attorney. You argue that a portion of the submitted information reflects either confidential communications from the client to the attorney or the attorney’s legal advice or opinions. You have marked the information which you contend is excepted from public disclosure pursuant to subsection 552.107(1). We note, however, that the attorney client privilege has been waived in regards to some of the information you have marked because the client confidences or attorney’s advice or opinions were made in the presence of persons who were not committee members.

We conclude that some of the information you have marked is excepted from public disclosure pursuant to subsection 552.107(1). We have marked the information you may withhold. The remaining information must be released because the attorney client privilege has been waived or because the information is neither a client confidence nor legal advice or opinion.

This letter ruling is limited to the particular records at issue in this request and to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Julie Reagan Watson  
Assistant Attorney General  
Open Records Division

JRW/pr

Ref: ID# 136643

Encl. Submitted documents

cc: Mr. Gregory Kaskie  
Capital Metropolitan Transportation Authority  
9910 East 5th Street  
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(w/o enclosures)

Mr. Robert R. Baker  
608 Ridge Crest Drive  
Round Rock, Texas 78664  
(w/o enclosures)