



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 7, 2009

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

OR2009-11007

Dear Mr. Simmons:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 353332.

The Dallas Area Rapid Transit ("DART") received a request for report number DC09002772, relating to an accident occurring on May 18, 2009. DART asserts the information is excepted from disclosure under sections 552.103 and 552.130 of the Government Code. We have considered the DART's claimed exceptions to disclosure and have reviewed the submitted information.

Section 552.103 of the Government Code provides in part:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature 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.

...

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated

on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103(a), (c). The governmental body has the burden of providing relevant facts and documents sufficient to establish the applicability of section 552.103 to the information that it seeks to withhold. To meet this burden, the governmental body must demonstrate: (1) litigation was pending or reasonably anticipated on the date of its receipt of the request for information and (2) the information at issue is related to that litigation. *See Univ. of Tex. Law Sch. v. Tex. 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.); *see also* Open Records Decision No. 551 at 4 (1990). Both elements of the test must be met in order for information to be excepted from disclosure under section 552.103. The question of whether litigation is reasonably anticipated must be determined on a case-by-case basis. *See* Open Records Decision No. 452 at 4 (1986). To establish litigation is reasonably anticipated, a governmental body must provide this office with "concrete evidence showing that the claim that litigation may ensue is more than mere conjecture." *Id.* Concrete evidence to support a claim litigation is reasonably anticipated may include, for example, the governmental body's receipt of a letter containing a specific threat to sue the governmental body from an attorney for a potential opposing party. Open Records Decision No. 555 (1990); *see* Open Records Decision No. 518 at 5 (1989) (litigation must be "realistically contemplated"). However, this office has determined the fact that a potential opposing party has hired an attorney who makes a request for information does not establish litigation is reasonably anticipated. Open Records Decision No. 361 (1983).

DART argues it reasonably anticipates litigation because "Attorney Hyde's [sic] has been retained to represent a client in a motor vehicle accident involving DART," and "Attorney Hyde makes reference in her letter . . . as being retained by a client who was injured in a motor vehicle accident involving a DART [b]us[.]" Based on these representations, we conclude DART has merely shown that a potential opposing party has hired an attorney who made a request for information. As we stated above, such an assertion does not constitute concrete evidence that establishes litigation is reasonably anticipated. Thus, DART may not withhold the information under section 552.103.

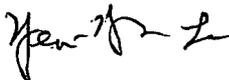
Section 552.130 of the Government Code excepts information relating to a Texas driver's license. Thus, DART must withhold the Texas driver's license information we marked under section 552.130. However, because section 552.130 protects personal privacy, the requestor has a right of access to her client's Texas driver's license number pursuant to section 552.023. *See* Gov't Code § 552.023 (person's authorized representative has special right of access to information held by governmental body that relates to person and that is protected from public disclosure by laws intended to protect person's privacy interests). Lastly, DART requests a previous determination allowing DART to withhold Texas motor vehicle record

information without seeking a decision from this office in the future. We decline DART's request for a previous determination on this issue.<sup>1</sup>

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

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Yen-Ha Le  
Assistant Attorney General  
Open Records Division

YHL/sdk

Ref: ID# 353332

Enc: Marked documents

c: Requestor  
(w/o enclosures)

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<sup>1</sup>We note section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b),