



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 26, 2013

Ms. Halfreda Anderson-Nelson  
Public Information Officer  
Senior Assistant General Counsel  
Dallas Area Rapid Transit  
P.O. Box 660163  
Dallas, Texas 75266-0163

OR2013-03247

Dear Ms. Anderson-Nelson:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 479799 (DART# 9478).

Dallas Area Rapid Transit ("DART") received a request for the dates and times specified information was accessed and downloaded; a copy of a specified work order; a copy of a specified 2010 financial statement; a copy of a specified e-mail; information pertaining to the disciplinary action and final disciplinary decision regarding two named individuals; all e-mail communications between DART and a named individual regarding his termination; and information regarding the resignations of two other named individuals.<sup>1</sup> You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note a portion of the submitted information, which we have marked, is not responsive to any category of the request for information. This ruling does not address the

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<sup>1</sup>You inform us DART sought clarification of two categories of the request. You state DART has not received a response from the requestor as of the date of DART's request for a decision from our office. Accordingly, we conclude DART need not respond to this portion of the request until it receives the requestor's clarification. We note, however, that when DART does receive the clarification, it must seek a ruling from us before withholding from the requestor any information that may be responsive to those items of the request for information. *See* Open Records Decision No. 663 (1999) (providing for tolling of ten-business-day deadline for requesting attorney general decision while governmental body awaits clarification).

public availability of non-responsive information, and DART need not release non-responsive information to the requestor.<sup>2</sup>

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). A governmental body that claims an exception to disclosure under section 552.103 has the burden of providing relevant facts and documentation sufficient to establish the applicability of this exception 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 the pending or anticipated 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.). Both elements of the test must be met in order for information to be excepted from disclosure under section 552.103. *See Open Records Decision No. 551 at 4 (1990).*

To establish litigation is reasonably anticipated, a governmental body must provide this office "concrete evidence showing that the claim that litigation may ensue is more than mere conjecture." *Open Records Decision No. 452 at 4 (1986)*. Whether litigation is reasonably anticipated must be determined on a case-by-case basis. *See id.* This office has found a pending Equal Employment Opportunity Commission ("EEOC") complaint and a pending complaint filed with the Texas Workforce Commission's Civil Rights Division indicate litigation is reasonably anticipated. *Open Records Decision Nos. 386 at 2 (1983), 336 at 1 (1982)*.

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<sup>2</sup>As our ruling is dispositive, we need not address your arguments against disclosure of this information.

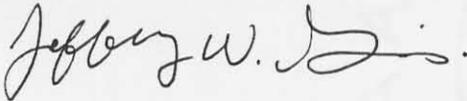
You state, and provide documentation showing, a discrimination claim was filed against DART with the EEOC prior to DART's receipt of the instant request. In that claim, the complainant alleges discrimination based on race, sex, and retaliation. You state the information at issue is directly related to the anticipated litigation. Based on your arguments and our review of the submitted information, we find DART reasonably anticipated litigation on the date this request was received. We find the information at issue is related to the anticipated litigation for purposes of section 552.103. We therefore conclude DART may withhold the responsive information under section 552.103 of the Government Code.<sup>3</sup>

We note the purpose of section 552.103 is to enable a governmental body to protect its position in litigation by forcing parties seeking information relating to that litigation to obtain it through discovery procedures. *See* ORD 551 at 4-5. Therefore, once the information at issue has been obtained by all parties to the anticipated litigation through discovery or otherwise, a section 552.103(a) interest no longer exists as to that information. *See* Open Records Decision Nos. 349 (1982), 320 (1982). We also note the applicability of section 552.103 ends once the related litigation concludes or is no longer reasonably anticipated. *See* Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

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, toll free at (888) 672-6787.

Sincerely,



Jeffrey W. Giles  
Assistant Attorney General  
Open Records Division

JWG/dls

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<sup>3</sup>As our ruling is dispositive, we need not address your arguments against disclosure of this information.

Ref: ID# 479799

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

