



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

July 19, 2016

Ms. Kerri L. Butcher  
Chief Counsel  
Capital Metropolitan Transportation Authority  
2910 East Fifth Street  
Austin, Texas 78702

OR2016-16238

Dear Ms. Butcher:

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# 619069.

The Capital Metropolitan Transportation Authority (the "authority") received two requests from different requestors representing the same individual for all information related to a specified motor vehicle accident. You claim the submitted information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note the submitted information contains the two requests for information. The two requests for information are not responsive to the instant request. This ruling does not address the public availability of non-responsive information, and the authority is not required to release such information in response to this request.

Section 552.103 of the Government Code provides in part as follows:

- (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 to show section 552.103 is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated on the date the governmental body received the request for information and (2) the information at issue is related to that litigation. *Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, orig. proceeding); *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). The governmental body must meet both prongs of this test for information to be excepted from disclosure under section 552.103(a).

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. *Id.* In Open Records Decision No. 638 (1996), this office stated a governmental body has met its burden of showing litigation is reasonably anticipated by representing it received a notice-of-claim letter that is in compliance with the Texas Tort Claims Act (“TTCA”), chapter 101 of the Civil Practices and Remedies Code, or an applicable municipal ordinance.

You claim the submitted information is excepted from disclosure under section 552.103 because the authority reasonably anticipated litigation related to this matter at the time of the request. Both requestors represent the individual injured in the incident at issue. The submitted documentation reflects the first requestor directed the authority to preserve relevant records and data and threatened a spoliation of evidence claim and possible damages or monetary sanctions should the authority fail to do so. Based on these representations and our review of the submitted information, we find the authority reasonably anticipated litigation on the date the requests were received. We also find that the submitted information is related to the anticipated litigation for purposes of section 552.103(a). Therefore, the authority may withhold the submitted information under section 552.103 of the Government Code.

However, we note once the information has been obtained by all parties to the anticipated litigation, no section 552.103(a) interest exists with respect to that information. Open Records Decision No. 349 at 2 (1982). We also note the applicability of section 552.103(a) ends when the litigation has concluded. Attorney General Opinion MW-575 (1982) at 2; Open Records Decision Nos. 350 at 3 (1982), 349 at 2.

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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Kavid Singh  
Assistant Attorney General  
Open Records Division

KVS/bhf

Ref: ID# 619609

Enc. Submitted documents

c: 2 Requestors  
(w/o enclosures)