



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 19, 2020

Mr. Albert Tovar
Office of the General Counsel
VIA Metropolitan Transit
123 North Medina Street
San Antonio, Texas 78207

OR2020-20884

Dear Mr. Tovar:

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# 840697.

VIA Metropolitan Transit ("VIA") received a request for information pertaining to a specified motor vehicle accident. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.130, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.103 of the Government Code provides, in part, the following:

(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(a) 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, no pet.); *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 parts of this test for information to be excepted from disclosure under section 552.103(a). *See* ORD 551 at 4.

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.” *See* ORD 452 at 4. Concrete evidence to support a claim that litigation is reasonably anticipated may include, for example, the governmental body’s receipt of a letter, prior to its receipt of a request for information, containing a specific threat to sue the governmental body from an attorney for a potential opposing party. ORD 555; *see* Open Records Decision No. 518 at 5 (1989) (litigation must be “realistically contemplated”). This office has concluded a governmental body’s receipt of a claim letter it represents to be in compliance with the notice requirements of the Texas Tort Claims Act (the “TTCA”), chapter 101 of the Civil Practice and Remedies Code, is sufficient to establish litigation is reasonably anticipated. *See* Open Records Decision No. 638 at 4 (1996). If that representation is not made, the receipt of the claim letter is a factor we will consider in determining, from the totality of the circumstances presented, whether the governmental body has established litigation is reasonably anticipated. *Id.* Whether litigation is reasonably anticipated must be determined on a case-by-case basis. ORD 452 at 4.

You state, and provide documentation demonstrating, prior to VIA’s receipt of the present request for information, VIA received a letter of representation from an attorney on behalf of his client, stating the attorney is representing the client with respect to a claim of injuries sustained as a result of the motor vehicle accident specified in the present request, which involves a VIA employee. You do not affirmatively represent to this office the notice of representation letter complies with the TTCA; thus, we will only consider the notice of representation letter as a factor in determining whether VIA reasonably anticipated litigation pertaining to the incident at issue. Nevertheless, based upon your representations, our review of the information at issue, and the totality of the circumstances, we determine you have established VIA reasonably anticipated litigation on the date it received the present request for information. Further, we find the information at issue is related to the anticipated litigation. Based on your representations and our review, we conclude VIA may generally withhold the submitted information under section 552.103 of the Government Code.

However, the information at issue involves alleged criminal activity. We note information normally found on the front page of an offense or incident report is generally considered public. *Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); *see* Open Records Decision No. 127 (1976). This office has stated basic information about a crime may not be withheld under section 552.103 of the Government

Code even if it is related to the litigation. Open Records Decision No. 362 (1983). We note basic information includes, among other items, a detailed description of the offense and the identities of the complainants, but does not include the identities of any witnesses or victims who are not complainants, dates of birth, or motor vehicle record information encompassed by section 552.130 of the Government Code. *See* ORD 127 at 3-4. Accordingly, with the exception of the basic information, which must be released, VIA may withhold the submitted information under section 552.103 of the Government Code.¹

Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to all parties to the anticipated litigation is not excepted from disclosure under section 552.103(a) and must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has been concluded. *See* Attorney General Opinion MW-575 (1982); *see also* 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

Blake Brennan
Assistant Attorney General
Open Records Division

BBX/mo

Ref: ID# 840697

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹ As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.