



Office of the Attorney General

State of Texas

February 15, 1994

DAN MORALES

ATTORNEY GENERAL

Mr. Brian N. Hail
Law Offices of Cowles & Thompson
901 Main Street, Suite 4000
Dallas, Texas 75202-3793

OR94-070

Dear Mr. Hail:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), Government Code chapter 552 (formerly V.T.C.S. art. 6252-17a).¹ We assigned your request ID# 23358.

The Town of Addison (the "town"), which you represent, has received a request for information relating to a certain franchise audit. Specifically, the requestor seeks "the MAS [Municipal Administrative Services, Inc.] audit of your telephone company, Southwestern Bell Telephone Company ("SWBT") and/or General Telephone Company ("GTE")" including:

1. Agreement between your City and MAS;
2. The MAS franchise audit of SWBT and/or GTE and a copy of the transmittal correspondence submitting the audit to the City;
3. Documents concerning any payments to MAS for the audit performed on SWBT and/or GTE; and
4. Any settlement agreement between your City and MAS concerning SWBT and/or GTE audit.

You seek a decision with respect to records responsive to categories 3 and 4 above. You seek to withhold this information from required public disclosure under section 552.103(a) of the act. As you do not comment on the remainder of the requested

¹We note that the Seventy-third Legislature repealed V.T.C.S. article 6252-17a. Acts 1993, 73d Leg., ch. 268, § 46. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

information, we presume that it has been or will be made available to the requestor. See Open Records Decision No. 363 (1983).

To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or administrative proceeding. Open Records Decision No. 551 (1990) at 3. The applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982). You advise us that the town was previously party to a suit filed in the 44th Judicial District Court of Dallas County, Texas, to which the requested information relates. You further advise that the suit was settled. Thus, the litigation at issue has been concluded. You do not contend that the information relates to any other pending or reasonably anticipated proceeding. Accordingly, section 552.103(a) is not applicable.² The town must release the requested information in its entirety.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Mary R. Crouter
Assistant Attorney General
Open Government Section

MRC/GCK/rho

Enclosures: Submitted documents

Ref.: ID# 23358

cc: Mr. Paul C. Isham
City Attorney
City of Grand Prairie
P.O. Box 530011
Grand Prairie, Texas 75053-0011
(w/o enclosures)

²We also note that the town may not withhold the information at issue here on the basis of the terms of the settlement agreement. As a general matter, governmental bodies are prohibited from entering into contracts to keep information confidential and may not use a contract to invoke section 552.101 unless expressly authorized by law to do so. See, e.g., Open Records Decision Nos. 514, 491 (1988); 484, 479 (1987). We are unaware of any law that authorizes the town to enter into an agreement to make information confidential.