



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 29, 1994

Ms. Lillian Guillen Graham
City Attorney
City of Rosenberg
P.O. Box 32
Rosenberg, Texas 77471-0032

OR94-840

Dear Ms. Graham:

You have asked whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 28886.

The City of Rosenberg (the "city") received a request for the following:

- [1.] All contracts and procurements by the city for 1993 and [year to date] 1994; [and]
- [2.] A copy of the request for proposal for [the] city account audit.

The city provided the requestor a copy of the request for proposal. You object, however, to providing information about the contracts and procurements for 1993 and 1994 to the date of the request. You contend that responding to this request will impose an overly harsh burden on the city and that this information is excepted from disclosure under section 552.103 of the Government Code.

You submitted to this office several letters from Caledonian Associates, Inc., a company that the requestor apparently works for. The letters to the city state that the company is filing "complaints" against the city over an alleged breach of contract and violations of the law. The letters complain of the city's treatment of the company and an alleged breach of contract. The correspondence indicates that copies of these letters were sent to the Office of the Attorney General. Since there is no indication that the company has filed any type of formal complaint against the city, we assume that the company considered it was filing complaints by sending complaint letters to the city.

You state that the request from the company's employee is a "fishing expedition" by the company to try to discover any wrongdoing by the city in its contract procurement procedures. Chapter 552 requires that all requests for information be treated uniformly without regard to the position or occupation of the person making the request or the person on whose behalf a request is made. Gov't Code § 552.223. Therefore the motives of the requestor in seeking information are not relevant to an inquiry under chapter 552. *Id.* § 552.222; Open Records Decision No. 542 (1990) at 4. Further, this office will not address speculative future requests for information, but rather will address only the request for which the city has sought a decision. Gov't Code § 552.301.

The requestor asked for all contracts and procurements for 1993 and 1994 to the date of the request. You told this office that reprogramming of the city's computers was necessary to respond to this request, so that the city could produce a list of vendors and other parties contracted with in 1993 and 1994, their addresses, and the amounts of the contracts. That list was sent to this office for review as being responsive to the request. It appears from the list that the request covers a broad class of information. When a requestor asks for a broad class of information, the governmental body should inform the requestor of the kinds of information available to assist the requestor in narrowing his or her request. Open Records Decision No. 87 (1975) at 3. For example, a requestor seeking contracts may actually wish to see only those contracts dealing with specific goods or services or those falling within a certain cost category.

A governmental body is not required to create new documents or to compile requested information into list form. Open Records Decision Nos. 599 (1992) at 5; 572 (1990) at 1; *see also* Attorney General Opinion JM-672 (1987) at 5 (information does not have to be prepared in a particular form dictated by the requestor). We assume that the city on its own decided to reprogram its system to create such a list, since the requestor did not seek to have information about contracts and procurements put into list form. We note that the list submitted to this office is not responsive to the requestor's written request for contracts and procurements. *See* Gov't Code § 552.302 (if a request for a decision is not timely submitted to this office, the information is presumed public). We assume that the requestor agreed to accept the city's computer-generated list as responsive to her request or as a tool to aid in narrowing her request. *See generally* Open Records Decision No. 606 (1992) (chapter 552 does not allow governmental body to provide requestor with newly generated document showing only discloseable information, unless requestor agrees to accept the new document rather than an excised copy of the records requested).

Although the city created the list in response to the request, the city objects to providing the list to the requestor. You assert that providing the list "will only lead to additional requests for more detailed information on the specific contracts involved" from the company.¹ You contend that responding to the request will pose a hardship on the city:

¹We note that section 552.022(3) of the Government Code provides that "information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body" is the type of information that is generally available to the public.

Under the Open Records Act and the guidelines adopted by the State General Services Commission, a city cannot charge for personnel time in making records available for public inspection under the Act if such records exist in standard size pages, which in this case, they do. Therefore, the production of these documents under the Open Records Act will impose a burden and undue hardship on the City which would not otherwise exist if the requestor were required to seek this information through discovery, since it would be appropriate for a court to require the requestor to bear the costs of producing documents of such a voluminous nature.²

We are not sure if your concern about compliance with the request being burdensome relates to the computer-generated list you submitted to this office or to the request for contracts and procurements. Since the city has already reprogrammed the city's computer system to create a new document rather than providing the requestor access to existing documents, the city should not then complain that creation of that document was too burdensome. Also, a governmental agency may not deny access to information because of the cost or method of supplying the requested information. See *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 687 (Tex. 1976), cert. denied, 430 U.S. 931 (1977).³

You also argue that information about the contracts and procurements is excepted from disclosure under section 552.103(a). To show the applicability of section 552.103(a), a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st District] 1984, writ ref'd n.r.e); Open Records Decision No. 551 (1990) at 4. A governmental entity must meet both prongs of this test for information to be excepted from disclosure under section 552.103(a).

You state that the company is a potential litigant whose complaint letters have put the city on notice of a claim for breach of contract. In Open Records Decision No. 452 (1986) at 4, this office stated:

Litigation cannot be regarded as "reasonably anticipated" unless there is more than a "mere chance" of it -- unless, in other words, we have concrete evidence showing that the claim that litigation may

²We note that the General Services Commission has promulgated guidelines for charges for records. See Gen. Servs. Comm'n, 19 Tex. Reg. 682-85, 2485-88 (1994) (to be codified at 1 T.A.C. §§ 111.61 - .70).

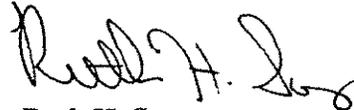
³We note that if costs for preparation of information would cause undue hardship to a governmental entity if the costs were not paid, that governmental entity may require a bond for payment of the costs or a cash prepayment of the anticipated costs. Gov't Code § 552.263.

ensue is more than mere conjecture. Whether litigation is reasonably anticipated must be determined on a case-by-case basis. [Citations omitted.]

This office has found litigation to be reasonably anticipated when an attorney on behalf of his client demanded damages and threatened to sue the governmental body. Open Records Decision No. 551, at 2. The letters submitted to this office are not from an attorney, but rather are from the chairman of the company. One letter states that if the city does not set aside its contract with a competing business it should make a charitable donation on behalf of the company. However, the letters do not threaten a lawsuit against the city. The city also has not shown how information about *other* contracts and procurements for 1993 and part of 1994 is related to allegations that the city breached a contract with the company. Therefore, the city has not shown the applicability of section 552.103(a).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Government Section

RHS/MAR/rho

Ref.: ID# 28886

Enclosures: Submitted documents

cc: Ms. Iris Williams
Caledonian Associates, Inc.
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(w/o enclosures)