



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 13, 1995

Ms. Kathleen Weisskopf
Assistant City Attorney
City of Arlington
P.O. Box 231
Arlington, Texas 76004-0231

OR95-400

Dear Ms. Weisskopf:

You have asked for reconsideration of Open Records Letter No. 95-166 (1995). This office determined in that informal decision that you had failed to request a decision from this office within the ten days required under section 552.301(a) of the Government Code. We have assigned your request for reconsideration ID# 33013.

The City of Arlington (the "city") received an open records request directed to the city secretary and dated February 7, 1995. You indicated to this office that the request letter was received by the city secretary on February 10, 1995.¹ The requestor asked for the following information:

a copy of all documents, including but not limited to, any and all communications, correspondence, memoranda, reports, summaries and records containing public information including the agendas and records of all meetings related to the negotiation and passage of Ordinance No. 87-68 finally adopted on April 7, 1987 and Ordinance No. 1857, finally adopted December 6, 1966.

¹Markings on a copy of the request letter submitted to this office indicate that the document was faxed from the city secretary to the city attorney's office and stamped as received by that office on February 10, 1995. We note that, for purposes of chapter 552, the date the city received the letter was the date it was actually received by the city secretary. See Gov't Code § 552.001(b); Open Records Decision Nos. 497 (1988) at 1-3, 44 (1974) at 2 (written request for information "directed to a reasonable person in a position of authority" in governmental body is proper request).

You and the requestor apparently had a telephone conversation regarding the request. Your correspondence indicates that the requestor agreed "to extend the City's response period" on the request until February 22, 1995. You indicate that you told the requestor this extension of time "will allow the City to assemble and review the documents" requested.

On February 22, 1995, you submitted a request for a decision to this office. You contended that some of the records at issue were excepted from disclosure pursuant to sections 552.103(a) and 552.107(1) of the Government Code. However, we informed you that the city had failed to timely seek a decision from this office pursuant to section 552.301:

(a) A governmental body that receives a written request for information that it considers to be within one of the exceptions under [chapter 552] must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions. The governmental body must ask for the attorney general's decision *within a reasonable time but not later than the 10th calendar day after the date of receiving the written request.*

(b) A governmental body that wishes to withhold information must submit written comments stating the reasons the information should be withheld. [Emphasis added; footnote omitted.]

Failure to abide by the provisions of section 552.301 results in the presumption that information is public. Gov't Code § 552.302. Therefore, you were advised to release the records at issue.²

We believe that there may have been some confusion over the chapter 552 requirements to produce public documents and to seek a decision from this office concerning exceptions from disclosure. Although chapter 552 requires the governmental

²You contend that your section 552.107(1) argument constitutes a compelling interest that overcomes the presumption that these records are public. As we explained in Open Records Letter No. 95-166 (1995), this office has concluded that

the mere fact that information falls within the section 552.107(1) exception does not alone constitute a compelling reason sufficient to overcome the presumption of openness that arises when a governmental body fails to request an attorney general decision within ten days of receiving an open records request

body to seek a decision from this office and raise exceptions it considers applicable within ten days, it does not require that a governmental body provide the requestor information within ten days of the request. See Open Records Decision No. 467 (1987).

Section 552.221 provides that the governmental body must "promptly produce" public information. In Open Records Decision No. 467 (1987) at 6, this office stated that

the act prohibits unreasonable delays in providing public information while recognizing that the functions of the governmental body must be allowed to continue. The interests of one person requesting information under the Open Records Act must be balanced with the interests of all the members of the public who rely on the functions of the governmental body in question. Accordingly, a governmental body may take a reasonable amount of time to comply with a request for public information. What constitutes a reasonable period of time depends on the facts in each case. The volume of information requested is highly relevant to what constitutes a reasonable period of time.

You explained that some of the information requested was in the city's archives and that the request covered a large volume of information. Under this circumstance, arranging with the requestor to provide the requested information on February 22, 1995 may have been a prompt production of documents.³

However, taking needed time to produce documents does not toll the ten day limit in which a governmental body must seek a decision from this office. Your letter indicates you were reviewing the requested information until February 22, 1995, at which time you submitted an untimely request for a decision from this office. You could have timely sought a decision, raising exceptions to disclosure and submitting representative samples of the documents at issue; or timely sought a decision, indicating which exceptions you believed would apply, and then sought extra time from this office to submit the documents that were actually at issue. See Open Records Decision No. 499 (1988) at 6.⁴

³We note that section 552.221 also requires that when information is unavailable at the time of the request because it is in storage, as in this situation, the governmental body must "certify this fact in writing to the applicant and set a date and hour within a reasonable time when the record will be available." Gov't Code § 552.221(b).

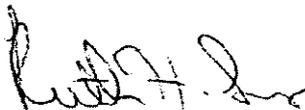
⁴You contended that some of the memoranda, notes, and other correspondence were privileged attorney-client communications under section 552.107(1). You also stated that because the city anticipated litigation against the requestor, various documents pertaining to the subject of that litigation could be withheld under section 552.103(a). These are both arguments that could have been timely raised, even if the specific documents had to be submitted at a later date.

This office has informed you that chapter 552 contains no provisions authorizing a governmental body to waive the ten day requirement. We noted in Open Records Letter No. 95-166 (1995) that the ten day deadline is tolled during the period that a requestor and a governmental body attempt to resolve access to the records informally, but only if there is actually legitimate confusion as to the scope of the request. Open Records Decision No. 333 (1982). We pointed out that you had supplied no information indicating that you were actually confused about the scope of the request. Your letter of February 22, 1995, to this office stated that you asked the requestor for additional time "[d]ue to the age of the information requested and need for additional time to locate the same" in the city's archives. You did not indicate that in order to fill the request you were seeking clarification of the scope and nature of documents needed, or that the request letter was ambiguous.

In your reconsideration request of April 14, 1995, you state that you discussed with the requestor the type of documents he wanted, and that there was "uncertainty regarding the scope" of the request. You indicate you did not address this issue previously because "the City believed we were within the time period for requesting an Attorney General's opinion." However, you were aware that the city's request for a decision was submitted to this office more than ten days after the open records request was received. Chapter 552 imposes a duty on a governmental body seeking an open records decision to submit that request to this office within ten days after receipt of the request for information. If circumstances exist that this office has recognized as justified for tolling the ten day time period, the governmental body must explain those circumstances when it requests a decision from this office. See Open Records Decision No. 333 (1982).

We will not consider arguments concerning timeliness that could have been raised initially. Therefore, the information must be released. If you have any questions, please contact this office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Government Section

RHS/KHG/rho

Ref.: ID# 33013

Enclosures: Submitted documents

cc: Mr. Rudy Martinez
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(w/o enclosures)