



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 20, 1995

Ms. Gail Fenter  
Assistant City Attorney  
The City of Midland  
P.O. Box 1152  
Midland, Texas 79702-1152

OR95-1512

Dear Ms. Fenter:

You ask this office to reconsider our decision in Open Records Letter No. 95-1245 (1995). We assigned your request for reconsideration ID# 37323.

In Open Records Letter No. 95-1245 (1995), we concluded that you had not met your burden under section 552.301 of the Government Code to request a decision from this office within ten calendar days of receiving the request for information. Thus, under section 552.302, the requested information was presumed public and must be released to the requestor absent a showing of some compelling reason to overcome this presumption, (for example, that the information is confidential under some other source of law or that third-party privacy interests are at stake). We reached this conclusion because the correspondence indicated that you had received the request for information on October 5, 1995 and your letter requesting an attorney general decision was postmarked October 24, 1995.

Along with your request for reconsideration, you have submitted to this office a copy of the Receipt for Certified Mail, Item No. Z 110 924 940, postmarked by the Midland Downtown Post Office on October 13, 1995. Section 552.308 of the Government Code provides:

When this subchapter requires a request . . . to be submitted . . . within a specified period, the requirement is met in a timely fashion if the document is sent . . . by first class United States mail properly addressed with postage prepaid and . . .

(2) the person required to submit . . . the document furnishes satisfactory proof that it was deposited in the mail within the period.

We believe that you have furnished satisfactory proof that your request for a ruling was deposited in the mail within the ten-day period. Accordingly, we withdraw our decision in Open Records Letter No. 95-1245 (1995). We now consider your arguments to withhold the requested information on the merits.

The City of Midland (the "city") received a request for information concerning complaints received against a certain city employee. You claim that the responsive information is excepted from required public disclosure under section 552.103 of the Government Code.

Section 552.103(a) excepts from required public disclosure information relating to litigation "to which the state or a political subdivision . . . is or may be a party." 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 quasi-judicial proceeding. Open Records Decision No. 551 (1990). In this instance, you have made the requisite showing that the requested information relates to pending litigation for purposes of section 552.103(a).

We note, however, that the complainant to this litigation, who is also the requestor, has previously had access to the record at issue. Generally, once the opposing parties in the litigation have seen or had access to any of the requested information, there would be no justification for withholding that information from the requestor pursuant to section 552.103(a). Open Records Decision Nos. 349 (1982), 320 (1982).<sup>1</sup> Thus, if the document at issue has previously been seen by all opposing parties to the litigation, the document must be released to the requestor. If the document at issue has not previously been seen by all opposing parties to the litigation, the document may be withheld.

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 should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Todd Reese  
Assistant Attorney General  
Open Records Division

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<sup>1</sup>In addition, the applicability of section 552.103(a) ends once the litigation has concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

RTR/RHS/rho

Ref: ID#s 37323, 36719

Enclosures: Submitted documents

cc: Mr. John H. Cook IV  
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(w/o enclosures)