



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

February 12, 1996

Mr. Robert J. Gervais  
Assistant City Attorney  
City of Galveston  
Legal Department  
P.O. Box 779  
Galveston, Texas 77553-0779

OR96-0174

Dear Mr. Gervais:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your requests were assigned ID# 36915, ID# 37363, ID# 37409, ID# 37557, and ID# 37825.

The City of Galveston (the "city") received five requests for information from the same requestor. Her requests can be summarized as follows:

- (1) Copies of several police radio transmissions identified by the specific day and time of broadcast;
- (2) Copies of the city's dispatch wrecker logs from June to November 19, 1995;
- (3) The names of police officers who allowed wreckers from companies other than the requestor's to pick up stalled vehicles on specific days and times;
- (4) "Information on the standing of [a named individual] cursing and threatening the wrecker inspector"; and
- (5) A copy of the city's revised wrecker ordinance.

You state that the information requested in item (3) can be obtained from the copies of police radio transmissions referenced in item (1). Because the information responsive to item (1) includes all information responsive to item (3), we need not specifically discuss

the disclosure of information responsive only to item (3).<sup>1</sup> The city objects to the form of item (4) because it "is not specific as to a particular record or records, nor is it specific as to time or a certain event in question." When a governmental body is presented with a broad request for information rather than for specific records, it should advise the requestor of the types of information available so that she may narrow his request. Open Records Decision Nos. 563 (1990), 561 (1990). You state that the information responsive to item (5) will be provided to the requestor. You have submitted the information responsive to items (1) and (2) to this office for review. You contend that this information is excepted from disclosure by section 552.103 of the Government Code.

Section 552.103(a) excepts from disclosure information relating to litigation to which the city is or may be a party. The city has the burden of providing relevant facts and documents to show that section 552.103(a) is applicable in a particular situation. In order to meet this burden, the city 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 Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4.

You note that the city is currently involved in a lawsuit with the requestor, *A & A Wrecker Service, Inc. v. City of Galveston*, No. G-95-111 (S.D. Tex. filed Mar. 1, 1995). You have demonstrated the relationship between the information requested in items (1) and (2) and the pending litigation. However, the section 552.103(a) exception is discretionary with the governmental body asserting the exception, and therefore it is within the city's discretion to release the requested information to the public. See Gov't Code § 552.007; Open Records Decision No. 542 (1990). All requested police radio transmissions were broadcast after the requestor filed suit against the city on March 1, 1995. The broadcast of information to the public subsequent to the commencement of litigation constitutes voluntary disclosure of the information to the public at large. Therefore, the city has waived its section 552.103(a) interest in the transmissions. Furthermore, the requestor has recounted in specific detail the information communicated during the transmissions. It appears that the requestor, who is the opposing party in the litigation, has personally had access to the requested transmissions. Consequently, you must release copies of the police radio transmissions to the requestor. Pursuant to section 552.103(a) you may withhold the dispatch wrecker logs requested in item (2). We note that once all parties to litigation have gained access to the logs, through discovery or otherwise, section 552.103(a) is no longer applicable. Open Records Decisions Nos. 551 (1990), 454 (1986). Further, once the litigation has concluded, section 552.103(a) is no longer applicable. Open Records Decision No. 350 (1982).

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<sup>1</sup>The city objects to the requests for information summarized in item (3), because they are phrased as questions, instead of as requests for specific records that can be produced. Although the Open Records Act does not require a governmental body to answer factual questions, Open Records Decision Nos. 555 (1990), a governmental body must make a good faith effort to relate a request to information which it holds. Open Records Decision No. 561 (1990).

In Open Records Letter Nos. 95-857 (1995) and 95-286 (1995) the city sought to withhold similar police radio transmissions related to the same litigation discussed here. Those transmissions were also publicly broadcast subsequent to the commencement of litigation. We ruled that copies of those transmissions were excepted from disclosure by section 552.103(a). We now modify those rulings to conform with this one, and rule that copies of the police radio transmissions referenced in those letters must also be released to the requestor.

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 is not a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway  
Assistant Attorney General  
Open Records Division

KEH/ch

Ref: ID# 37557

Enclosures: Submitted tapes

cc: Ms. Arlene Anderwald  
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(w/o enclosures)