



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

April 19, 1996

Mr. Jay B. Doegey  
City Attorney  
City of Arlington  
P.O. Box 231  
Arlington, Texas 76004

OR96-0586

Dear Mr. Doegey:

You ask 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# 38512.

The City of Arlington (the "city") received an open records request for the following information:

Any and all studies, proposals, working papers, plans and/or documents prepared by city staff members or city-employed firms in 1994, 1995 or 1996 concerning the possible construction of [a] sports arena within the city limits of Arlington.

Any and all 1995 and 1996 correspondence prepared by city officials or their representatives and sent, transmitted or delivered to professional sports franchises or their representatives. This would include correspondence sent to the Dallas Stars of the NHL, Dallas Mavericks of the NBA and Dallas Cowboys of the NFL.

Any and all arena-related letters, faxes or computer-conveyed messages [or] letters received by city staffers or city-employed firms from any of those three pro sports entities and processed by City of Arlington staff members or elected officials during 1994, 1995 and 1996.

You have submitted to this office various documents responsive to the request that you contend are excepted from required public disclosure by sections 552.103, 552.107, or 552.110 of the Government Code.

You first contend that all of the documents submitted to this office relate to reasonably anticipated litigation and thus are excepted from required public disclosure by section 552.103. You contend that section 552.103(a) protects this material because the city has received correspondence from the City of Dallas advising the city that the City of Dallas would use "all legal means necessary to prevent [the city] from luring either [the Dallas Stars or the Dallas Mavericks] away from the City of Dallas or tortiously interfering with either team's contract with the City." This letter goes on to threaten litigation in the event the city "tortiously interferes" with the contracts.

To secure the protection of section 552.103(a), a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation to which the governmental body is a party. Open Records Decision No. 588 (1991) at 1. The mere chance of litigation will not trigger section 552.103(a). Open Records Decision No. 452 (1986) at 4 and authorities cited therein. To demonstrate that litigation is reasonably anticipated, the governmental body must furnish concrete evidence that litigation involving a specific matter is realistically contemplated and is more than mere conjecture. *Id.*

In this instance you have not shown that the requested material meets these tests. It is well established that where an individual has publicly stated on more than one occasion an intent to sue, that threat alone does not trigger section 552.103. Open Records Decision No. 331 (1982). *See also* Open Records Decision No. 351 (1982). We note that the City of Dallas' letter to the city is dated November 30, 1994. Given the amount of time that has transpired since the date of the letter and the other limited facts before this office, we believe that the likelihood of litigation is too speculative at this point in time. Accordingly, the city must release all of those documents for which you raised only section 552.103.

You next contend that a letter from the city to an attorney requesting certain legal services is excepted from public disclosure by section 552.107(1) of the Government Code. Section 552.107(1) protects information coming within the attorney-client privilege. *See* Open Records Decision No. 574 (1990). In instances where an attorney represents a governmental entity, the attorney-client privilege protects only an attorney's legal advice and confidential attorney-client communications. *Id.* Assuming that none of the information contained in this record has already been disclosed to the public, either in public meetings or in any other manner, we conclude that this letter constitutes a privileged communication and thus may be withheld pursuant to the attorney-client privilege. *See* Open Records Decision No. 412 (1984).

Finally, you contend that certain documents supplied to the city by the Arlington Chamber of Commerce/Arlington Economic Development Foundation (the "foundation") constitute confidential "commercial information" protected by section 552.110 of the Government Code. Consequently, in accordance with the practice this office established in Open Records Decision No. 575 (1990), we notified representatives of the foundation that we received your request for an open records decision regarding this information. In

our notification, this office requested an explanation as to why any of the information at issue was excepted from public disclosure, with the caveat that unless we received such explanation this office would instruct the city to disclose the information.

The foundation responded to our request and has submitted its arguments as to why the information at issue should be excepted from public disclosure as both a trade secret and "commercial or financial" information.<sup>1</sup> See Gov't Code § 552.110. However, the foundation has failed to explain, and it is not apparent to this office, how any of the information at issue implicates the *foundation's* proprietary interests. All of the foundation's activities in connection with the gathering and creating the records at issue were performed within the scope of a contractual "arms-length transaction" while providing "economic development services" to the city. None of the information at issue pertains directly to the foundation or its individual interests, but rather concerns solely the city's interest in the development of a sports arena. This office does not recognize the nature of any competitive harm that would befall the foundation from the release of this information. See Open Records Decision Nos. 504 (1988), 494 (1988) (burden of proof is on third party to show evidence of likely competitive harm). We therefore conclude that section 552.110 does not apply to any of the information at issue. Accordingly, except for the request for legal services discussed above, the city must release the requested information in its entirety.

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,



Stacy E. Sallee  
Assistant Attorney General  
Open Records Division

SES/RWP/ch

Ref.: ID# 38521

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<sup>1</sup>The foundation also argues that the requested information is excepted from public disclosure by section 552.104. Section 552.104 generally was not intended to protect business entities that are in competition in the private sector. The primary purpose of section 552.104 is to protect the government's purchasing interests by preventing a competitor or bidder from gaining an unfair advantage over other competitors or bidders. Moreover, a general allegation or mere possibility that an unspecified competitor might gain advantage by disclosure will not invoke section 552.104. Open Records Decision No. 463 (1987). We therefore do not consider this exception applicable.

Enclosures: Submitted documents

cc: Mr. Ted Willis  
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