



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

July 29, 1996

Ms. Mercedes Leal  
Senior Assistant County Attorney  
Harris County  
1001 Preston, Suite 634  
Houston, Texas 77002-1891

Ms. Helen M. Gros  
Senior Assistant City Attorney  
Post Office Box 1562  
Houston, Texas 77251-1562

OR96-1318

Dear Ms. Leal and Ms. Gros:

You have each asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your requests were combined and assigned ID# 40528.

Harris County (the "county") and the City of Houston (the "city") received requests for information concerning the Houston/Harris County Sports Facility Public Advisory Committee (the "committee"). The requestor has specifically asked both the city and county for the following information:

1. All proposals, surveys, or other reports presented to the committee by Bob Eury and/or Central Houston, Inc., to include a survey referred to in a March 29, 1996 *Houston Chronicle* article.
2. All memos, letters, and/or other reports presented to the committee from the Houston Oilers, Houston Rockets, Astrodome USA, Houston Astros, and Houston Aeros.
3. All written reports and/or correspondence received from the committee to the city and county.
4. A list of committee members.

Both the county and the city argue that information held by the committee is not public information. The city admits that it has some responsive records, but contends that these records are protected from disclosure under section 552.111.

The county states that a county judge and the city mayor "acting individually, requested that a group of individuals get together to gather information regarding sports franchises in Houston, Harris, County, Texas." The county also asserts that "no county funds, equipment, or office support is being used by the [c]ommittee" and that the committee has no authority to act on behalf of the county. The city states that the committee "is a group of public-spirited Houstonians with an interest in the City of Houston and Harris County's total sports attractions." The city also asserts that the committee receives no public funding and has no authority to act on behalf of the city. We will address the arguments of the city and the county separately.

### THE CITY

The city has submitted to this office as responsive to the request records "provided by the Committee to the City's Department of Finance and Administration for preliminary analysis to give the Mayor an opportunity to review certain assumptions and projections made by the Committee as they accumulate data." The city also states that these are "inter-agency memoranda related to an authorized policy-making function of the City."

We note initially that if the committee is not acting for or on behalf of the city in some sort of official capacity, section 552.111 is inapplicable. Section 552.111 excepts from disclosure interagency or intra-agency communications consisting of advice, recommendations, opinions, and other material reflecting the deliberative or policymaking processes of the governmental body. See *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ); Open Records Decision No. 615 (1993) at 5. It also excepts from disclosure information created for a governmental body by outside consultants acting on behalf of the governmental body in some sort of official capacity. Open Records Decision No. 462 (1987) at 14. Communications between governmental bodies and third parties, as the city has asserted the committee to be, are not protected from disclosure under section 552.111. Open Records Decision No. 474 (1987). Thus, in order to determine the applicability of section 552.111 to the memoranda between the committee and the city, we need to determine the relationship of the committee to the city.

Section 552.002 of the Government Code provides in pertinent part:

(a) In this chapter, 'public information' means information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

(1) by a governmental body; or

(2) for a governmental body and the governmental body owns the information or has a right of access to it.

A governmental body includes "the part, section, or portion of an organization, corporation, commission, committee, institution, or agency that spends or that is supported in whole or in part by public funds." Gov't Code § 552.003(1)(A)(x).

It is well established that the Open Records Act does not require a governmental body to obtain information not in its possession or to prepare new information in response to a requestor. Open Records Decision No. 445 (1986). On the other hand, if a governmental entity employs an *agent* to carry out a task that otherwise would have been performed by the entity itself, generally the information relating to the task that has been assembled or maintained by the agent is subject to section 552.002. *See* Open Records Decision No. 585 (1991) (applicant list assembled for city was subject to public disclosure).

According to minutes of a December 11, 1995 committee meeting, the city's legal department provided advice to the committee (enclosed).<sup>1</sup> It also appears, based on correspondence dated November 7, 1995 (enclosed) that the city provided the committee support staff time and services in its endeavors. To the extent that the committee receives city support, it is a governmental body under section 552.003(1)(A)(x) of the Government Code. We note that support staff time and services are generally considered things of value that belong to the governmental body and thus may be used only for a public purpose. *See* Penal Code § § 1.07(a)(41) (defining "public servant"), 39.02 (concerning public servant misuse of "public property, services, personnel, or any other thing of value belonging to the government"); *see also* Ethics Advisory Opinion No. 173 (1993).

The city's letter to this office asserts that the committee is engaged in an "authorized policy-making function of the City." It appears that the committee is either a governmental body under section 552.003(1)(A)(x) or is acting as an agent for the city. In either event, the information requested is generally subject to chapter 552. As to the three documents submitted to this office, the city's letter indicates that these are draft or preliminary documents. Section 552.111 excepts from disclosure interagency or intra-agency communications consisting of advice, recommendations, opinions, and other material reflecting the deliberative or policymaking processes of the governmental body. *See Texas Depart. of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ); Open Records Decision No. 615 (1993) at 5. Section 552.111 excepts from required public disclosure preliminary drafts of documents related to policymaking matters, since drafts represent the advice, opinion, and recommendation of the drafter as to the form and content of the final documents. *See* Open Records Decision No. 559 (1990).

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<sup>1</sup>We note that if the December 11, 1995 committee meeting minutes supplied to this office accurately reflect advice given the committee, there may be a misunderstanding concerning the definition of and access to public records. We note that the definition of "public information" under section 552.002, not the actual physical location of records, controls whether the public has access to information.

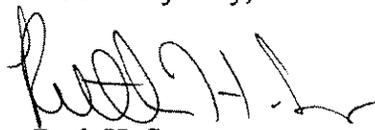
Thus, the three draft communications between the city and the committee are excepted from disclosure pursuant to section 552.111. As to other records that may be responsive to the request and are held by the committee, the city has raised no chapter 552 exception against disclosing those documents. Any other records maintained by the committee that are responsive to the request must therefore be released to the requestor.

**THE COUNTY**

The county, in a memorandum brief, asserts that it does not have any of the requested information or a right of access to this information. *See* Gov't Code § 552.002 (defining "public information"). The county also asserts that the committee is not acting on behalf of or, indeed, in any capacity for the county and that no county funds or property have been used by or for the committee. *See* Penal Code § 39.02; Ethics Advisory Opinion No. 173 (1993). Assuming that the committee has received no county staff support and services and does not act as an agent for the county, then under those circumstances the county is not required to provide records that it does not have. *See* Open Records Decision No. 362 (1983) at 2. If, however, the committee receives county staff support and services or acts as an agent for the county, then the records requested must be provided.

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,



Ruth H. Soucy  
Assistant Attorney General  
Open Records Division

RHS/ch

Ref.: ID# 40528

Enclosures: Submitted documents

cc: Mr. Andrew D. Kreston, C.P.A.  
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(w/o enclosures)