



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 25, 1996

Ms. Eugenia A. Cano
City Attorney
City of Alvin
216 W. Sealy
Alvin, Texas 77511

OR96-2197

Dear Ms. Cano:

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# 101902.

The City of Alvin ("Alvin") has received a request for "any records of meeting, phone calls, and paperwork between Alvin city council, Alvin city attorney, Alvin city manager and LS&R consulting Group, Inc." You explain that the requested information relates to Alvin's proposal to the City of Houston ("Houston") for disposal of Houston's solid waste. You have provided some of the information to the requestor. You contend that sections 552.103 and 552.104 of the Government Code except the remaining information from required public disclosure.

At the outset, we note that you received the request for information on August 2, 1996. You requested a decision from this office on August 29, 1996. Consequently, you failed to request a decision within the ten days required by section 552.301(a) of the Government Code.

Section 552.301(a) requires a governmental body to release requested information or to request a decision from the attorney general within ten days of receiving a request for information the governmental body wishes to withhold. When a governmental body fails to request a decision within ten days of receiving a request for information, the information at issue is presumed public. Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publishing Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The governmental body must show a compelling interest to withhold the information to overcome this presumption. See *Hancock*, 797 S.W.2d at 381.

Although you contend that sections 552.103 and 552.104 of the Government Code except the records from required public disclosure, you have not presented compelling reasons for withholding the records under these exceptions. The mere fact that the information would be excepted from disclosure under section 552.103 of the Government Code if the governmental body had made a timely request for an open records decision does not constitute a compelling reason to withhold the information from public disclosure. Open Records Decision No. 473 (1987). In addition, section 552.104 may be waived by a governmental body. Open Records Decision No. 592 (1991). We conclude that Alvin has waived the protection of these two exceptions. You must therefore release the requested information except as noted below.

In Open Records Letter No. 96-2186 (1996), this office concluded that Alvin could withhold under section 552.104 of the Government Code the proposal, the agreement between Alvin and Sanifill, Inc., and the highlighted portion of one invoice from a law firm which references a term of its proposal to Houston. In Open Records Letter No. 96-2195 (1996), this office concluded that Alvin could withhold under section 552.103 "all bills and checks and invoices in reference to any legal conversation, court cost and letters . . . concerning any landfill items from Feb 1996 to Aug. 30, 1996 with and [sic] law firms of lawyers." To the extent that the present request for records overlaps with those records at issue in Open Records Letter Nos. 96-2186 (1996) and 96-2195 (1996) or in any way references the terms of the proposal or agreement with Sanifill, you may withhold those records under those previous Open Records Letters. The remaining information must be released.

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,



Loretta R. DeHay
Assistant Attorney General
Open Records Division

LRD/rho

Ref.: ID# 101902

Enclosures: Submitted documents

cc: Mr. Robert Wall
4109 C.R. 57
Rosharon, Texas 77583
(w/o enclosures)