



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 6, 1996

Mr. Philip S. Haag
Hutcheson & Grundy, L.L.P.
Franklin Plaza
111 Congress Avenue, Suite 2700
Austin, Texas 78701-4043

OR96-2316

Dear Mr. Haag:

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# 102227.

The River Place Municipal Utility District (the "district"), which you represent, received a request for "a copy of the 1996-1997 fiscal year operating budget of the MUD, with supporting definitions and explanations, which was approved at the August 27, 1996 meeting of the Board of Directors." You assert that this information, to the extent that it exists, is excepted from disclosure pursuant to section 552.103 of the Government Code.

The Open Records Act does not ordinarily require a governmental body to create or obtain new information in order to comply with a request for information. Open Records Decision No. 534 (1989). You state that no documents containing "supporting definitions and explanations" exist. Thus, the district need not comply with that portion of the request.

You claim that the budget itself is excepted from disclosure under section 552.103. Section 552.103(a) excepts from disclosure information relating to litigation to which a governmental body is or may be a party. The governmental body 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 governmental body 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 have referenced pending litigation and demonstrated, by way of example, how certain portions of the budget relate to the litigation. Under these circumstances, we conclude that you may withhold from disclosure those portions of the budget that in fact relate to the litigation. Portions of the budget that are not related to the litigation must be released to the requestor.

We note, however, that if the opposing parties in the pending litigation have seen or had access to the budget, there would be no justification for now withholding the budget pursuant to section 552.103(a). Open Records Decision Nos. 349 (1982), 320 (1982). 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). Of course, the district is prohibited from selectively disclosing the budget. Open Records Decision No. 490 (1988). Thus, if the district chooses to make the budget available to any member of the public, the district will thereby waive its section 552.103 protection and be required to also release the budget to the requestor. *See* Gov't Code § 552.007.

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 any questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref: ID# 102227

Enclosures: Submitted documents

cc: Mr. Bill Gravenor
Sierra Development Corporation
4207 River Place Blvd.
Austin, Texas 78730
(w/o enclosures)