



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 26, 1997

Mr. Walter W. Leonard
Attorney at Law
One Summit Avenue, Suite 1010
Fort Worth, Texas 76102

OR97-0629

Dear Mr. Leonard:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 104559.

The City of Northlake (the "city"), which you represent, received two requests for several categories of documents, including agendas and minutes of city council meetings, documents received from or sent to specified individuals and entities, and copies of checks from the city to specified individuals and entities. The requestor subsequently narrowed his request as follows: (1) the request for copies of checks "is limited to December 2, 1990 to present," and (2) the request for all of the other documents "is limited to January 1, 1996 to the present." You have released or are preparing to release some of these documents to the requestor. However, you contend that a substantial number of the requested documents are excepted from required public disclosure pursuant to sections 552.101, 552.103, 552.105, 552.107, 552.110, and 552.111 of the Government Code. You have submitted to this office representative samples of the documents that you contend are protected.¹ The documents are labeled pages 1 through 141. We have considered the exceptions you claim and have reviewed the documents at issue.

Initially, we note that among the documents you submitted to this office are the following: agendas of city council meetings, municipal ordinances, joint resolutions, articles of organization filed with the Secretary of State, and a plat (pages 43-59, 75-90, 114-115). For compelling reasons of public policy, publicly-filed documents such as municipal ordinances and articles of

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

organization cannot be withheld from disclosure even if they arguably fall within the scope of one of the exceptions to disclosure found in chapter 552 of the Government Code. *See* Open Records Decision No. 551 (1990) at 2-3. Furthermore, information made expressly public by statute is not subject to the exceptions to disclosure. Open Records Decision No. 623 (1994) at 3. The minutes, tape recordings, and agenda of an open meeting are public records. Gov't Code §§ 551.022 (minutes and tape recordings), .041 (notice), .043 (time and accessibility of notice), .045 (emergency addition to agenda). Therefore, the city must release the above-listed documents to the requestor.

You have claimed more than one exception for many of the submitted documents. For the sake of clarity, we will first provide a general discussion of each of the claimed exceptions, and then conclude by applying the exceptions to the documents. Where you have claimed several exceptions for one document and we determine that one of those exceptions protects the document, we will not address the other exceptions that you have raised for that document.

You claim that some of the submitted documents are excepted from disclosure under section 552.101 of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." However, we are not aware of, and you have not cited, any law that makes the documents confidential. We find that none of the submitted documents are excepted from disclosure pursuant to section 552.101.

Section 552.103(a) of the Government Code 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. Once the opposing parties in the anticipated or pending litigation have seen or had access to the information at issue, there is no justification for continuing to withhold that information from disclosure 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).

Section 552.105 of the Government Code excepts from disclosure information relating to:

- (1) the location of real or personal property for a public purpose prior to public announcement of the project; or
- (2) appraisals or purchase price of real or personal property for a public purpose prior to the formal award of contracts for the property.

Section 552.105 was designed to protect a governmental body's planning and negotiating position with respect to particular transactions. Open Records Decision No. 564 (1990) at 2. This exception

protects information relating to the location, appraisals, and purchase price of property only until the transaction is either completed or aborted. Open Records Decision Nos. 357 (1982) at 3, 310 (1982) at 2.

Section 552.107(1) of the Government Code protects information that an attorney cannot disclose because of a duty to his client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107(1) excepts from public disclosure only "privileged information," that is, factual information or requests for legal advice communicated by the client to the attorney and legal advice or opinion rendered by the attorney to the client. Open Records Decision No. 574 (1990) at 5-7. Section 552.107(1) does not, however, protect purely factual information. *Id.*

Section 552.110 of the Government Code protects the property interests of private persons by excepting from disclosure two types of information: (1) trade secrets and (2) commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision. Section 552.110 is only applicable to secret information that gives its owner some competitive advantage over those who do not have access to the information. *See* Open Records Decision Nos. 639 (1996), 554 (1990), 552 (1990).

Section 552.111 of the Government Code excepts from disclosure "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." This exception applies not only to internal memoranda, but also to memoranda prepared by consultants of a governmental body. Open Records Decision Nos. 462 (1987) at 14, 298 (1981) at 2. In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. Section 552.111 does not, however, except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. Open Records Decision No. 615 (1993) at 4-5.

Now we consider whether the exceptions you have claimed apply to the documents at issue. We note that you have submitted multiple copies of some documents. In these instances, the page numbers in this letter refer to the "originals" that appear first in numerical order. We have not referenced the page numbers of duplicate documents in our conclusions.²

It is unclear which exceptions to disclosure you have claimed for page 31, and you have not claimed exceptions for pages 15, 21, or 22. Consequently, the city must release these four documents to the requestor.

You assert that many of the documents relate to anticipated litigation to which the city

²The following documents are duplicates: pages 60, 63, 93-96, 104-113, 116-118, 123-124, 130-131.

may be a party and are, therefore, excepted from disclosure under section 552.103(a). We agree that the city reasonably anticipates becoming involved in litigation with the Cities of Fort Worth ("Fort Worth") and Flower Mound. Although you have not explained how the documents relate to the anticipated litigation, in reviewing the documents we were able to ascertain the relationship between the anticipated litigation and some of the documents. The city may withhold the following documents from disclosure under section 552.103(a) until such time as the potential opposing parties gain access to them or until the litigation is concluded: pages 2-3, 13-14, 16-20, 32-37, 64-74, 91-92, 101-103, 119-122, 125-129, 132-141. The following documents are not excepted from disclosure under section 552.103(a) because the potential opposing parties have had access to them: pages 4-12, 24-27, 97-100. Pages 29-30 and pages 40-42 are not covered by section 552.103(a) because you have not established, and it is not apparent from the documents themselves, how the documents relate to reasonably anticipated or pending litigation.

You claim that pages 24-27, 40-42, and 97-100 are excepted from disclosure under section 552.105. We agree that section 552.105 excepts from disclosure one section of page 25 and page 27 in its entirety. We have marked these documents accordingly.

You have indicated that pages 4-12 are excepted from disclosure under section 552.107(1) because they constitute attorney-client communications. Pages 4-12 were submitted to the city by a third party and, therefore, do not fall within the scope of section 552.107(1).

Next, you contend that pages 40-42 and 97-100 are excepted from disclosure under section 552.110. However, the third-party information contained in these documents is not the type of information protected by section 552.110. Furthermore, it appears that the information is not confidential and can be ascertained from other sources. Thus, we find that none of the information contained in pages 40-42 and 97-100 is excepted from disclosure under section 552.110.

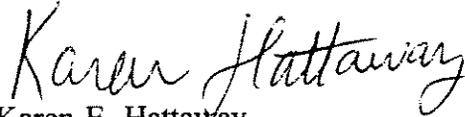
Finally, you claim that pages 4-12, 28-30, and 40-42 are excepted from disclosure under section 552.111. Pages 4-12 and 40-42 are not the type of information that is protected by section 552.111. *See* Open Records Decision No. 561 (1990) (section 552.111 protects interagency memorandum where there is privity of interest or common deliberative process between governmental agencies). Pages 28-30 do contain advice, recommendations, and opinions relating to the city's policymaking processes. These documents also contain severable factual information that is not excepted from disclosure under section 552.111. We have marked the portions of pages 28-30 that may be withheld from disclosure under section 552.111.

To summarize, the city may withhold the following pages from disclosure under the following exceptions: (1) pages 2-3, 13-14, 16-20, 32-37, 64-74, 91-92, 101-103, 119-122, 125-129, 132-141 under section 552.103, (2) marked portion of page 25 and page 27 in its entirety under section 552.105, and (3) marked portions of pages 28-30 under section 552.111.

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,



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Assistant Attorney General
Open Records Division

KEH/ch

Ref: ID# 104559

Enclosures: Marked documents

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