



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

July 8, 1997

Ms. Elaine S. Hengen  
Assistant City Attorney  
City of El Paso  
2 Civic Center Plaza  
El Paso, Texas 79901-1196

OR97-1543

Dear Ms. Hengen:

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# 107073.

The City of El Paso (the "city") received a request for copies of documents that pertain to any past or present investigations involving the city's Engineering Department, including its past director and deputy director. You inform this office that there is only one investigation whose records are responsive to the request, and that is a pending investigation initially begun by the El Paso Police Department. You state that all reports from the El Paso Police Department's investigation were transferred to the custody and control of the Federal Bureau of Investigation ("FBI"), as constructive agent for a federal grand jury, or were seized pursuant to a search warrant, and that the city kept no copies of these records. You further state that you have been advised by the FBI that it will not release any of the information to the city. You thus argue that because the city does not have the requested information in its possession, and cannot gain access to it, the city is not required to furnish the information to the requestor. You argue, in the alternative, that the information is excepted from disclosure pursuant to sections 552.101 and 552.108 of the Government Code.

As a preliminary matter, we address whether the city must respond to a request for information not in its possession. The Open Records Act does not ordinarily require a governmental body to obtain information not in its possession, Open Record Decision Nos. 558 (1990), 499 (1988), 518 (1989), or to obtain information from another entity, so long as the entity does not hold the information on behalf of the governmental body, Open Record Decision No. 534 (1989). Nor must a governmental body obtain new information in order to comply with a request, Open Record Decision No. 561 (1990). Therefore, because you state that the city does

not have the requested information in its possession and does not have access to it, we conclude the city need not provide the requested information to the requestor in this situation.<sup>1</sup>

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,



Michael A. Pearle  
Assistant Attorney General  
Open Records Division

MAP/ch

Ref.: ID# 107073

cc: Mr. David Crowder  
El Paso Times  
Times Plaza  
El Paso, Texas 79901-1470

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<sup>1</sup>As we conclude the city is not required to provide the requested information not in its possession, we need not address your arguments under sections 552.101 and 552.108.