



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 14, 1997

Ms. M. Bernadette McKay
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR97-1825

Dear Ms. McKay:

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# 107826.

The City of San Antonio (the "city") received a request for several categories of information pertaining to the city's actions under its sexually oriented business ordinance. Specifically, the requestor seeks the following information:

- 1) The letter from Mr. Lloyd Garza outlining his opinion on the Pornography Ordinance;
- 2) The time and attendees of any meeting concerning re-writing the ordinance; and,
- 3) Any copies of the drafts of the new ordinance along with any projections of a date of completion for a new contract.

In response to the request, you submitted to this office for review the information which you assert is responsive. You seek to withhold the information responsive to category one, the letter memorandum, under sections 552.101, 552.106, and 552.107 of the Government Code. You seek to withhold the information responsive to category three under section 552.106 of the Government Code. You also claim that the requested information, in its entirety, may be withheld pursuant to section 552.103 of the Government Code.¹ You inform our office

¹In Open Records Letter No. 97-1638 (1997), our office specifically addressed the release of certain related information pursuant to section 552.103 of the Government Code. Therefore, if the requested records overlap with any information which was the subject of our previous ruling in Open Records Letter No. 97-1155 (1997), then the city should withhold or release this information as directed in that ruling. A copy of that ruling is enclosed for your convenience.

that you have advised the requestor that there are no records responsive to category two of the request. We have considered the exceptions you claim and have reviewed the documents at issue.

Initially, we address your assertion that "no record" exists responsive to category two. We note that chapter 552 does not apply to information that does not exist. *See* Open Records Decision No. 555 (1990). Nor does chapter 552 require a governmental body to prepare new information in response to a request. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.--San Antonio, 1978, writ *dism'd*); *see also* Open Records Decision No. 87 (1975). Therefore, the city does not have to comply with the request for information that did not exist at the time of the request.² We will rely on your assertion that you have advised the requestor that certain information does not exist.

Section 552.107(1) excepts information that an attorney cannot disclose because of a duty to his client. Section 552.107(1) excepts information from disclosure if:

[I]t is information that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Texas Rules of Civil Evidence, the Texas Rules of Criminal Evidence, or the Texas Disciplinary Rules of Professional Conduct.

In Open Records Decision No. 574 (1990), this office concluded that section 552.107(1) excepts from public disclosure only "privileged information," that is, information that reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinions; it does not apply to all client information held by a governmental body's attorney. Open Records Decision No. 574 (1990) at 5. Section 552.107(1) does not protect purely factual information unless the factual information constitutes a confidence that the client related to the attorney. *See id.* at 5. We have reviewed the submitted information for which you raised section 552.107(1) as an exception, and we conclude that the information in category one of the request, the letter memorandum, constitutes confidential client communications or attorney legal advice or opinion. Therefore, the submitted record may be withheld pursuant to section 552.107(1).

We next consider your claim that the "drafts of the new ordinance" requested in category three of the request is protected from disclosure by section 552.106 of the Government Code. Section 552.106 excepts "[a] draft or working paper involved in the preparation of proposed legislation." This section protects the internal deliberative processes of a governmental body in enacting legislation. Open Records Decision No. 248 (1980). It does not, however, except basically factual information. Open Records Decision No. 344

²However, if the city holds records from which the requested information can be obtained, it must provide that information to the requestor unless it is otherwise excepted from disclosure. Open Records Decision Nos. 561 (1990), 555 (1990), 379 (1983), 347 (1982).

(1982). Although section 552.106 is designed to encourage frank discussion on policy matters between subordinates or advisors of a legislative body, it is specifically applicable only to the "preparation of proposed legislation." Open Records Decision No. 429 (1985) at 5. Section 552.106 ordinarily applies only to persons with a responsibility to prepare information and proposals for a legislative body. Open Records Decision No. 460 (1987). You contend that the "Memorandum was drafted to apprise the City Council and City Manager . . . and to advise City Staff of the provisions of the Ordinance It will be used, therefore, as a guideline to amend and revise the Ordinance."³ On this basis, you assert that the submitted document as prepared by the city staff constitutes draft legislation which is excepted from disclosure by section 552.106. Assuming that the city staff is authorized by the city to prepare drafts concerning proposed legislation, and based on our review of the document at issue, we conclude that the city may withhold it from public disclosure under section 552.106 of the Government Code.

As we resolve your request under sections 552.106 and 552.107, we need not specifically address your other claimed exceptions at this time. 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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Sam Haddad
Assistant Attorney General
Open Records Division

SH/gle

Ref.: ID# 107826

Enclosures: Submitted documents

cc: Mr. Fred Reynolds
1202 Waverly
San Antonio, Texas 78201
(w/o enclosures)

³We note that section 9.001 *et seq.* of the Local Government Code sets forth the procedures by which a home-rule municipality may amend its charter. See *City of Socorro v. U.S. Fireworks*, 842 S.W.2d 779 (Tex. App.--El Paso 1992, writ denied). We make no determination by this ruling, however, whether the city has properly followed those procedures.

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