



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 29, 1997

Mr. Stephen R. Alcorn
Acting City Attorney
City of Grand Prairie
P.O. Box 534045
Grand Prairie, Texas 75053-4045

OR97-2189

Dear Mr. Alcorn:

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# 109813.

The City of Grand Prairie (the "city") received requests for "[a]ll financial payments of \$5,000 or more made by the city for settlements of legal disputes dating back to January 1, 1993 to [July 25, 1997]," "[a]ll financial payments to outside legal counsel employed by the city dating back to January 1, 1993 to [July 25, 1997]," and information pertaining to Paul Isham, who served as the city attorney, including a settlement agreement between him and the city. You state that the city has no information concerning the settlement payments and legal fees, and you assert that the settlement agreement and reference letter are excepted from public disclosure by section 552.103 of the Government Code. We have considered your arguments and reviewed the submitted information.

Section 552.103(a) excepts from disclosure information:

- (1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and
- (2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

The final terms of a settlement agreement are not excepted by section 552.103. Open Records Decision Nos. 245 (1980), 139 (1976). Thus, you may not withhold the settlement agreement and reference letter under section 552.103.

You assert that the settlement agreement contains a confidentiality provision which prevents disclosure of the agreement and reference letter. However, governmental bodies may not enter into contracts to keep information confidential except where specifically authorized to do so by statute. Open Records Decision Nos. 444 (1986), 437 (1986), 425 (1985). Because a contract cannot overrule the Open Records Act, you may not withhold the settlement agreement and reference letter based on its confidentiality provision.

Finally, you state that the city does not compile a list of settlement payments and legal fees as they are handled on a case-by-case basis, and therefore, the city has no information in the manner requested. However, you further state that “[a]ny records so compiled would presumably be maintained in the individual files, or by the TML Intergovernmental Risk Pool.” (Emphasis added). Chapter 552 of the Government Code does not require a governmental body to prepare information in a form requested by a member of the public. Open Records Decision No. 467 (1987). However, a governmental body has a duty to make a good faith effort to relate a request for information to information the governmental body holds. Open Records Decision No. 561 (1990) at 8. If the city holds information from which the requested information can be obtained, the city must provide that information to the requestor unless it is otherwise excepted from disclosure. If the city has no such information, chapter 552 of the Government Code does not require a governmental body to make available information which did not exist at the time the request was received. Open Records Decision No. 362 (1983); *see* Open Records Decision No. 452 (1986) (document not within chapter 552’s purview if it does not exist when governmental body receives a request for it). Nor is a governmental body required to prepare new information to respond to a request for information. Open Records Decision Nos. 605 (1992), 572 (1990), 416 (1984).

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,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/rho

Ref.: ID# 109813

Enclosures: Submitted documents

cc: Ms. Stephanie Sandoval
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