



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

February 24, 1998

Mr. Charles L. Cunningham  
Director of Finance  
City of Taylor  
P.O. Box 810  
Taylor, Texas 76574

OR98-0526

Dear Mr. Cunningham:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 112668.

The City of Taylor (the "city") received a request for "any and all documents in any way touching upon or related to the proposed Water Service Agreement [b]etween the City of Taylor and Jonah Water Special Utility District, including but not limited to, all memoranda and correspondence relating to said proposed contract." You assert that responsive records are protected from disclosure because the city is "in negotiations on pending litigation."

We note initially that you submitted to this office three documents that you indicate were submitted "to support the circumstances of this case." Although the documents at issue are responsive to the request for information, it is not clear to this office whether you actually submitted these documents in compliance with section 552.301(b)(3) of the Government Code, or if they were submitted only as part of your argument that the documents are excepted from disclosure. Section 552.301(b)(3) provides that a governmental body seeking a decision from this office must submit a copy of the specific information requested or a representative sample of the requested information. Therefore, pursuant to section 552.303(c) of the Government Code, this office asked you to submit responsive documents within seven days of the date of the facsimile request. We notified you by facsimile on December 3, 1997, that failure to submit responsive documents would result in the presumption that the information at issue is public. Gov't Code § 552.303(e). Since you did not respond to this facsimile notice, in this ruling we assume that the submitted documents are the only responsive documents at issue. We note that, in compliance with section 552.303(e), if there are responsive documents at issue other than the three submitted documents, your failure to submit those other documents to this office results in the presumption that they are public.

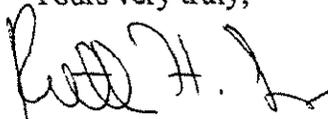
We will address the documents that were submitted to this office. All three of the documents are related to mediation of which the city is a party. One of the documents is a letter from the mediator to the parties.<sup>1</sup> Two of the documents are letters to the judge concerning the status of the mediation. 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.

You have shown that the city is engaged in ongoing settlement negotiations. However, section 552.103(a) is generally inapplicable once information has been obtained by all parties to the litigation. Open Records Decision Nos. 349 (1982), 320 (1982). Because the opposing party to the pending litigation has had access to the submitted records, the submitted records must be released.

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,



Ruth H. Soucy  
Assistant Attorney General  
Open Records Division

RHS/ch

Ref.: ID# 112668

Enclosures: Submitted documents

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<sup>1</sup>We note that section 154.073 of the Texas Civil Practice and Remedies Code makes confidential certain records made at an alternative dispute resolution procedure. We note that you have not shown that section 154.073 is applicable to the records at issue.

Enclosures: Submitted documents

cc: Ms. Carol Fox  
2301 CR 374  
Taylor, Texas 76574  
(w/o enclosures)