



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 5, 1998

Mr. Robert J. Gervais
Assistant City Attorney
City of Galveston
Legal Department
P.O. Box 779
Galveston, Texas 77553-0779

OR98-0611

Dear Mr. Gervais:

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# 113023.

The City of Galveston (the "city") received a request for information concerning an ongoing audit of the city's impound lot. You explain that the requested information is in the possession of the city's auditor and is, therefore, unavailable for review.

Initially, you assert that the requestor seeks a copy of an audit report on the impound lot. You state that the report has not been drafted. The Open Records Act does not require a governmental body to make available information which does not exist nor does it require a governmental body to prepare new information. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.--San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 (1992), 362 (1983). Since the report does not exist, the city need not respond to that portion of the request.

You also seek to withhold all notes and documentation regarding the impound lot in possession of the city auditor's office. You did not, however, submit to this office copies or representative samples of the specific information that was requested. Pursuant to section 552.301(b), a governmental body is required to submit to this office (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, and (3) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents.

Pursuant to section 552.303(c) of the Government Code, this office notified you by facsimile dated December 16, 1997 that you had failed to submit the requested information

as required by section 552.301(b). We requested that you provide this information to our office within seven days from the date of receiving the notice. The notice further stated that under section 552.303(e) failure to comply would result in the legal presumption that the information at issue was presumed public.

You did not provide our office with the information that was requested. Instead, you argue that the requested information is in active use and cannot be released at this time. We note that the active use provision does not allow a governmental body to avoid disclosure, but to merely delay the release of information for a reasonable time. See Gov't Code § 552.221. We also note that section 552.221 does not allow a governmental body to avoid complying with the general requirements of the Texas Open Records Act. Therefore, as provided by section 552.303(e), the notes and other documentation regarding the impound lot are presumed public. The information must be released to the requestor.

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,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/ghg

Ref.: ID# 113023

Enclosures: Submitted documents

cc: Mr. Blu Shields
P.O. Box 2550
Galveston, Texas 77553-2550
(w/o enclosures)