Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 27, 1998

Ms. Lisa Aguilar
Assistant City Attorney
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR98-0818

Dear Ms. Aguilar:

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# 113640.

The City of Corpus Christi (the "city") received a request for the *supplemental information* concerning a previous request for "police reports pertaining to the shooting of Edward Seth Rogers, and actions Rogers took prior to his shooting," as well as "the disciplinary and commendation records of Charles Williams, Mike Delgado and Edward Solis." In response to the request, you submitted to this office for review the information which you assert is responsive. With respect to the category of information concerning "commendations or disciplinary action" for which you have not raised an applicable exception, we assume that you will release such information to the requestor should it exist. You assert that the submitted information is excepted from disclosure pursuant to section 552.103 of the Government Code. We have considered the exception and arguments you have raised and have reviewed the information at issue.

As a preface to our discussion, we note that this office has previously addressed a request for related information. In Open Records Letter No. 97-1622 (1997), our office specifically addressed the release of information pertaining to the shooting of Edward Seth Rogers and the "disciplinary and commendation" records of certain officers. Based on the facts presented, in Open Records Letter No. 97-1622 (1997), this office ruled in part that section 552.103 was not applicable to the requested information.

In the present request, the requestor represents that certain records responsive to the original request for information have not been released as directed by our previous ruling.[1]

---

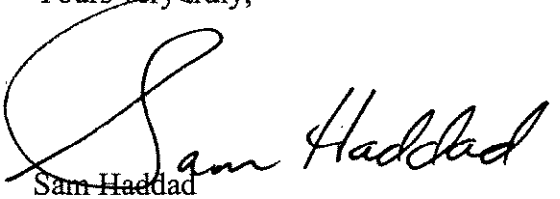
[1]We note that to the extent that the pending request for information raises questions of fact, this office is unable to resolve such questions of fact through the opinion process. Open Records Decision Nos. 554 (1990), 552 (1990).

The city, however, contends that it "has provided the Caller-Times with copies of the supplemental police reports prepared on or before April 16, 1997, the date the city received the original request."[2] To the extent the requested records overlap with any information which was the subject of our previous ruling in Open Records Letter Nos. 97-1622 (1997), the city should withhold or release this information as directed in the ruling. However, as for the information which the city contends did not exist at the time of the original request for information, we will consider the application of section 552.103.

You have provided to this office additional arguments in an attempt to demonstrate the applicability of section 552.103 to this request for information. *See* Open Records Decision No. 638 (1996) (governmental body raising section 552.103(a) has duty to provide this office with information about new and significant developments relevant to claim that it anticipates litigation). To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 551 (1990). You have submitted a copy of the petition from the pending lawsuit. We agree that you have shown that litigation is pending and our review shows that the records submitted to this office are related to the litigation. Therefore, the submitted records may be withheld pursuant to section 552.103. We note, however, that if the opposing party to the litigation has already had access to the records, section 552.103(a) is inapplicable. Open Records Decision Nos. 349 (1982), 320 (1982).

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 may 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,



Sam Haddad
Assistant Attorney General
Open Records Division

SH/rho

---

[2]We note that Chapter 552 of the Government Code 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). However, a governmental body must make a good faith effort to relate a request to information which it holds. Open Records Decision Nos. 561 (1990), 555 (1990), 379 (1983), 347 (1982).

Ref.: ID# 113640

Enclosures: Submitted documents

cc: Mr. Larry L. Rose
Executive Vice-President/Editor
Corpus Christi Caller Times
820 Lower North Broadway
Corpus Christi, Texas 78401
(w/o enclosures)