



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

April 30, 1998

Mr. Stephen Whitworth  
Assistant City Attorney  
City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78283-3966

OR98-1102

Dear Mr. Whitworth:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 114780.

You inform us that Mr. Fred R. Jones of Goode, Casseb & Jones, P.C., is representing the City of San Antonio (the "city") in a dispute relating to property on the San Antonio Riverwalk. Mr. Jones received a request for city records relating to this property. You claim that the requirements of the Open Records Act are not triggered by a request to Mr. Jones, the city's outside counsel. In the alternative, you argue that the requested records are excepted from required public disclosure pursuant to sections 552.103 and 552.107 of the Government Code. You have submitted a representative sample of the records at issue to this office for review.<sup>1</sup>

First, we will consider whether the letter to Mr. Jones constitutes an open records request to the city. Government Code section 552.221(a) states that "[a]n officer for public information of a governmental body shall promptly produce public information for inspection, duplication, or both on application by any person to the officer." Section 552.301(a) of the Government Code provides:

A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that is considers to be within

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<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

one of the exceptions under Subchapter C must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions. The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10<sup>th</sup> business day after the date of receiving the written request. For purposes of this subchapter, a written request includes a request made in writing that is sent to the officer for public information, or the person designated by that officer, by electronic mail or facsimile transmission.

Thus, a governmental body's duty to release information to the public or request a ruling from the attorney general arises only after the governmental body is presented with a written request for information. *See* Open Records Decision No. 304 (1982). Government Code section 552.201 identifies the officer for public information as "the chief administrative officer of a governmental body," or in the case of a county office, as the "elected county officer." Section 552.202 of the Government Code states that for purposes of complying with the Open Records Act, "[e]ach department head is an agent for the officer for public information." Although Mr. Jones is acting as the city's agent with respect to the property dispute, Mr. Jones is not the city's agent with respect to the city's responsibilities under the Open Records Act. *See* Open Records Decision No. 576 (1990). We conclude, therefore, that the letter addressed and delivered to Mr. Jones does not constitute an open records request to the city.

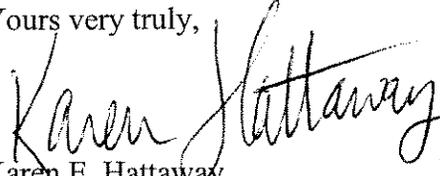
Even if the letter to Mr. Jones is a proper request for information, the city would be able to withhold the requested documents from disclosure under section 552.103 of the Government Code. Section 552.103(a) excepts from disclosure information relating to litigation to which a governmental body is or may be a party. The governmental body has the burden of providing relevant facts and documents to show that section 552.103(a) is applicable in a particular situation. In order to meet this burden, the governmental body must show that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. You have demonstrated that the city reasonably anticipates litigation in the property dispute. You have also explained how the requested records relate to the reasonably anticipated litigation. We note, however, that publicly filed documents, such as property deeds, cannot be withheld under section 552.103(a). *See* Open Records Decision No. 551 (1990) at 2-3. Therefore, with the exception of publicly filed documents, the city may withhold the records at issue from disclosure under section 552.103(a).<sup>2</sup>

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<sup>2</sup>We note that if the opposing parties in the anticipated litigation have seen or had access to any of the information in these records, there would be no justification for withholding that information from disclosure pursuant to section 552.103(a). Open Records Decision Nos. 349 (1982), 320 (1982). In addition, the applicability of section 552.103(a) ends once the litigation has concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (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 should not be relied upon as a previous determination regarding any other records. If you have any questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway  
Assistant Attorney General  
Open Records Division

KEH/ch

Ref: ID# 114780

Enclosures: Submitted documents

cc: Mr. George J. Carson  
Attorney and Counselor  
304 Milam Building  
San Antonio, Texas 78205  
(w/o enclosures)