



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 9, 1998

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

OR98-2641

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# 119340.

The City of Grand Prairie (the "city") received requests for information on August 7 and August 18 related to the intersection of 1200 Egyptian Way and 170 North Town Drive; an accident occurring on April 30, 1997; the identity of employees with knowledge of the stop signs and accidents at the intersection; and other more general information, such as working papers, rules, policies and staff manuals about the placement of stop signs and about the intersection in question.

You submit to this office the claim filed in relation to the accident on April 30, 1997 at the intersection of 1200 Egyptian Way and 170 North Town Drive and an accident report that was previously disclosed.¹ You represent that there are no references to the intersection in the traffic register of the city and that there is no information in the possession of the city's transportation department relative to the decision to designate the intersection as a three way stop.² You also represent that the claim file is being prepared by the adjuster, and is not in the possession of the city.³ The city did not submit to our office the claim file, which is

¹You do not represent whether you are making available to the requestor information that was previously provided to the requestor. There is no basis in the Act for withholding requested information that has been previously furnished to the requestor. Therefore, you must release to the requestor information that you previously provided to the requestor. The accident report is public. V.T.C.S. art. 6701d, § 47.

²A governmental body must make a good faith effort to relate a request to information which it holds. Open Records Decision 561 (1982). However, a governmental body need not prepare new information in response to a request. Open Records Decision Nos. 452 (1986) and 342 (1982).

³The claim file is subject to the Act. The governmental body by or for which information is "collected, assembled, or maintained" pursuant to section 552.002(a) retains ultimate responsibility for

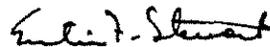
required to be submitted to our office under section 552.301(b). You assert that the requested information is exempt from disclosure pursuant to Government Code § 552.103. We have considered the exception you claim and have reviewed the submitted information.

Pursuant to section 552.303(c) of the Government Code, *id.* §19, on October 22, 1998, our office notified you by letter sent via facsimile that you had failed to submit the information 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), *id.*, failure to comply would result in the legal presumption that the requested information is public information.

You did not timely provide our office with the information that was requested in our October 22, 1998 notice to you. Therefore, as provided by section 552.303(e), the information that is the subject of this request for information is presumed to be public information. Information that is presumed public must be released unless a governmental body demonstrates a compelling interest to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). You have not shown compelling reasons why the information at issue should not be released. Therefore, the information is presumed to be public and 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,



Emilie F. Stewart
Assistant Attorney General
Open Records Division

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disclosing or withholding information in response to a request under the Act. Although the information is not in the physical custody of the governmental body, the information is in the constructive custody of the governmental body and is therefore subject to the act.

- (a) In this chapter, "public information" means information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:
- (1) by a governmental body; or
 - (2) for a governmental body and the governmental body owns the information or has a right of access to it. [Emphasis added.]

Ref.: ID# 119340

Enclosures: Submitted documents

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(w/o enclosures)