



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 11, 1998

Mr. John Steiner  
Division Chief, Law Department  
City of Austin  
P.O. Box 1546  
Austin, Texas 78767-1546

OR98-3063

Dear Mr. Steiner:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID # 120414.

The City of Austin (the "city") received a request for information for the following information:

Copies of all memoranda, letters, notes and any and all other documents (whether stored or kept on hard copy or electronically) pertaining to any audit, investigation, review, or other inquiry made by any City personnel (including without limitation the Internal Audit Department) regarding application of the Transportation User Fee and/or the Comprehensive Drainage Fee to commercial accounts. You may limit your response to the time period beginning January 1, 1996.

You argue that the requested information is excepted from required public disclosure by sections 552.103, 552.106, 552.107, and 552.111 of the Government Code. You have submitted the responsive information at issue.

You explain that this office has previously ruled upon the release of the requested information. You state that information responsive here is the same as that previously sought by the requestor. In Open Records Letter No. 98-305 (1998), we concluded that the city could withhold, with exceptions, similarly requested information under section 552.103. *See* Open Records Decision Nos. 555 (1990), 551 (1990). You explain that you have released those documents which we ruled were not protected from disclosure. Our previous decision states:

You inform this office that an attorney representing an individual who has been making claims for transportation and drainage utility fund refunds on behalf of various ratepayers stated to a city employee that "he intended to take action" concerning the city's correction of its fee

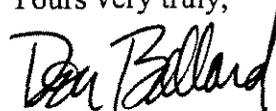
calculation and refund practices. You further inform this office that this same attorney, during a meeting with the Mayor's aid concerning his client's refund requests, advised the mayor's aide that he intended to take "viable legal recourse" with respect to the refund issues. We conclude that the city has demonstrated that litigation is reasonably anticipated in this case and, upon review of the submitted information, find that most of the documents are related to the anticipated litigation, and may be withheld. However, we have marked a set of documents for which the city did not establish relatedness.

Open Records Letter No. 98-305 at 2 (1998).

The requestor now argues that the factual justifications for applying section 552.103 no longer exist. The requestor contends that the specific, potential litigation underlying the city's argument for nondisclosure has been settled or resolved. The requestor states that any threats of litigation are now extinguished. The city, nonetheless, argues that litigation continues to be reasonably anticipated. The city asserts that the litigation threats were not limited to the specific matters pending before the city. The threats, the city represents, indicated that the requestor would challenge city procedures and methods of calculating fees not just to have particular customers' fees returned. The requestor argues that the city's representation is incorrect and that such is not his intent. The conflict over the meaning of the requestor's statements to the city presents us with disputed factual circumstances. Disputed questions of fact are not resolvable in the open records process, therefore, the attorney general must rely on the representations of the governmental body. *See* Open Records Decision Nos. 554 (1990), 552 (1990). Consequently, based upon the city's representations, we find that section 552.103 continues to apply to the requested documents. The city may rely on Open Records Letter No. 98-305 (1998) to withhold the requested information not already released.

Because we resolve this matter under section 552.103, we need not consider your additional arguments against disclosure. 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 questions about this ruling, please contact our office.

Yours very truly,



Don Ballard  
Assistant Attorney General  
Open Records Division

JDB\nc

Ref: ID# 120414

Enclosures: Submitted documents

cc: Mr. Don E. Walden  
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(w/o enclosures)