



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 21, 1998

Mr. John T. Patterson
Assistant City Attorney
City of Waco
P.O. Box 2570
Waco, Texas 76702-2570

OR98-3207

Dear Mr. Patterson:

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# 120954.

The City of Waco (the "city") received an open records request for three categories of information that you contend may be withheld from the public pursuant to section 552.103 of the Government Code. To secure the protection of section 552.103(a), a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation to which the governmental body is a party. Open Records Decision No. 588 at 1 (1991). In this instance, you have demonstrated that the requested information relates to pending litigation against the city. This does not, however, end our discussion as to whether the city may withhold the information at issue.

The first item sought by the requestor is the "name, address and business telephone number of the Director of the Public Health District appointed by the members of the District." This request seeks the work address and work telephone number of a public employee and the name of a public employee. We assume that this information is otherwise available to other members of the public, and this type of information in fact is among the types of information that the Open Records Act specifically makes public. *See* Gov't Code § 552.002(2), (4), (15). Furthermore, the Open Records Act prohibits selective disclosure. *See* Gov't Code § 552.007; *see also* Open Records Decision No. 454 (1986). Consequently, unless the city has withheld this information from all members of the public since the time the litigation ensued, this information must be released.

The second category of information sought by the requestor is the "identity of the governing body who are members of the Public Health District." You have submitted to this office as responsive to this request the "Cooperative Agreement" between the various entities

making up the Waco-McLennan County Public Health District. According to its terms, the agreement "shall be included in the minutes of the governing body of each Member" The minutes of a governmental body are specifically made public by statute, *see* Gov't Code § 551.022, and therefore may not be withheld from the public pursuant to section 552.103 of the Government Code. Information specifically made public by statute may not be withheld from the public by any of the Open Records Act's exceptions to public disclosure. *See, e.g.*, Open Records Decision Nos. 544 (1990), 378 (1983), 161 (1977), 146 (1976); *see also* Open Records Decision No. 551 at 2-3 (1990). The city therefore must release the cooperative agreement.

The requestor's third request seeks the following information:

The name, work address and telephone number of the person or persons who are authorized to accept service on behalf of the Public Health District when such Public Health District is sued.

You contend that the city possesses no information responsive to this request because "under Section 101.063 of the Civil Practice and Remedies Code, a governmental unit that is a member of a public health district is not liable under the Tort Claims Act for any conduct of the district's personnel or for any condition or use of the district's property." We believe that the question of whether a public health district may properly accept service in connection with a lawsuit is a legal question to be determined by the court hearing the pending litigation against the city. We therefore conclude that the city need not comply with this aspect of the request.

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,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/RWP/ch

Ref.: ID# 120954

Enclosures: Submitted documents

cc: Mr. Fred M. Johnson, Jr.
Pakis, Giotes, Beard & Page
801 Washington Avenue
Eighth Floor
Waco, Texas 76701
(w/o enclosures)