

January 5, 1999

Ms. Marie E. Galindo
Assistant City Attorney
City of Midland
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OFFICE OF THE
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OR99-0001

Dear Ms. Galindo:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 118709.

The City of Midland (the "city") received a request for "all restaurant violation reports available," in order "to see what restaurants are in violation of any and all health codes." In response to the request, you submit to this office for review a representative sample of the information, consisting of the city's health inspection reports, which you assert is responsive.¹ You have not raised any exceptions to disclosure for the representative sample of the requested records. However, "the City avers that the four corners of the request seems to indicate it will have to prepare new information," and you also contend that the requestor has failed to "clarify, narrow and specifically identify" the information at issue. We have considered the arguments you have raised and have reviewed the documents at issue.

In your brief to this office, you also ask "whether or not [the city] . . . is required to disclose records that may be prepared and collected in the future." As an answer to your question, we note that a governmental body is not required to comply with a standing request for information to be collected or prepared in the future. *See* Attorney General Opinion JM-48 at 2 (1983).

¹We 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.

We next address your assertion that the request contemplates the preparation of new information and that the requestor should clarify and narrow his request. We first note that the act only applies to information in existence and does not require a governmental body to prepare new information. However, your arguments are contradicted by the submitted Retail Food Store Inspection Report, which are distributed by the Texas Department of Health and completed by the city in its food establishment health inspections. *See* Open Records Decision Nos. 605 (1992), 445 (1986). Concerning your assertion that the requestor should narrow and clarify his request, we note that a governmental body must make a good faith effort to relate a request to information which it holds, and if a request for information is unclear, a governmental body may ask the requestor to clarify the request. Gov't Code § 552.222(b); *see also* Open Records Decision No. 561 at 8 (1990). As for the city's argument that certain requested information is not organized in the manner it has been requested, we note that chapter 552 does not require the preparation of information in the form requested by a member of the public, unless the information exists in an electronic format. *See* Gov't Code § 552.231; *see also* section 552.228 (regarding information in electronic format); Open Records Decision No. 362 (1983) (Open Records Act does not require governmental body to make available information which does not exist). However, the requestor's request is phrased as "all restaurant violation reports" and is premised on the phrase "available to us," therefore, we conclude that the Retail Food Store Inspection Reports are responsive.

We next address your failure to raise an applicable exception as for the submitted Retail Food Store Inspection Reports which are responsive to the request. We note that a governmental body must raise and submit written comments, within fifteen days of receiving the request, explaining the reasons why a stated exception applies to the requested information. *See* Gov't Code § 552.301(a), (b)(1). Furthermore, the Open Records Act places on the custodian of records the burden of proving that records are excepted from public disclosure. Attorney General Opinion H-436 (1974). Based on the city's failure to raise any exceptions, we find that the city has no valid basis to withhold the requested information.

Furthermore, we note that Food Inspection Reports are ordinarily public information as provided by section 229.171(b) of title 25 of the Texas Administrative Code. This provision is a Texas Department of Health regulation governing food and drug handling and provides as follows:

(b) Report of inspections. Whenever an inspection is made of food service establishment, the findings shall be recorded on the inspection report form referred to in subsection (f) of this section. The original of the inspection report form shall be furnished to the owner or person in charge at the completion of the inspection and constitutes a written notice. The inspection report form shall summarize the

weighted point value for each requirement. The rating score of the establishment shall be the total of the weighted point value for all violations, subtracted from 100. *The completed inspection report form is a public document that shall be made available for public disclosure to any person who requests it according to law.* (Emphasis added.)

25 TAC § 229.171(b). Food Inspection Reports are report forms summarizing the requirements of food and drug handling under the auspices of the Texas Department of Health, which sets forth a weighted point value of all violations of the established standards for food service establishments. See 25 TAC § 229.171(f). Because the records of a governmental body are presumed to be open under the Open Records Act unless they fall into a particular exception from disclosure, the governmental body has the burden of proving that an exception applies to the records requested from it. Open Records Decision No. 542 (1990). Here, the general presumption of openness under the Open Records Act is heightened by the regulation making completed inspection reports public information.² 25 TAC § 229.171(b). Because the inspection reports do not appear to be excepted from public disclosure and you have failed to adequately explain why the information should be withheld, you may not withhold the Retail Food Store Inspection Reports.

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,



Sam Haddad
Assistant Attorney General
Open Records Division

SH/ch

Ref.: ID# 120660

²Information that a statute other than chapter 552 expressly makes public is not subject to the exceptions to required public disclosure. Open Records Decision No. 623 at 3 (1994).

Enclosures: Submitted documents

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