OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS
JOHN CORNYN

December 1, 1999

Ms. Bonnie Lee Goldstein
Bickerstaff, Heath, Smiley, Pollan, Kever & McDaniel
3000 Bank One Center
1717 Main Street
Dallas, Texas 75201-4335

OR99-3458

Dear Ms. Goldstein:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code, the Public Information Act. Your request was assigned ID# 129360.

The City of McKinney (the "city"), which you represent, received a request for the following information:

> 1. Copies of all grant applications concerning the McKinney Airport to include Local, State, County, Federal and private moneys within the past 10 years (1989 to the present);
>
> 2. Copies of all grants and Funds obtained for the McKinney Airport to include all Local, State, County, Federal and private moneys within the past 10 years (1989 to the present);
>
> 3. Copies of all expenditures on said airport within the past 10 years (1989 to the present).

You explain that in response to item 1 of the request, the city has released Exhibits 18-38, which pertain to grant applications and agreements. Furthermore, you state that in response to item 3 of the request, the city will release the budget books for the requested years. You seek, however, to withhold the submitted documents under section 552.103 of the Government Code in accordance with two letter rulings issued by this office. We have examined your arguments and have reviewed the submitted documents.

Section 552.103(a), known as the litigation exception, excepts from required public disclosure information

> relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party[.]

You explain that the documents at issue were the subject of two previous open records rulings, Open Records Letter Nos. 98-2589 (1998) and 99-0781 (1999). In those rulings, this office concluded that the documents at issue were related to anticipated litigation and, therefore, could be withheld from disclosure under section 552.103. You assert that since the circumstances giving rise to the litigation have not changed, you seek to continue to withhold this information under section 552.103.

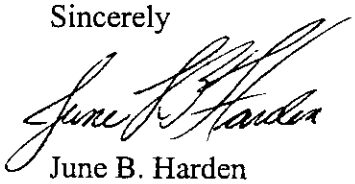
We note, however, that since the issuance of those letter rulings, the Seventy-sixth Legislature amended section 552.022 of the Public Information Act to provide that information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body is public unless that information is expressly made confidential under other law. Gov't Code § 552.022(a)(3). Section 552.103 is an exception under the Public Information Act and is, therefore, not other law that makes the requested information confidential. Thus, the city may not rely on the previously issued letter rulings to continue to withhold any responsive information that is "information in an account, voucher, or contract relating to the receipt . . . of public or other funds by a governmental body." Accordingly, pursuant to section 552.022(a)(3), we have marked a representative sample of the types of information that are public and must be released.

As for the remaining information that has neither been made public by section 552.022 nor has been previously released to the requestor, the city may continue to withhold this information under section 552.103 in accordance with Open Records Letter Nos. 99-0781 and 98-2589. We note, however, that absent special circumstances, once information has been obtained by all parties to the litigation, either through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349, 320 (1982). Thus, to the extent that the opposing parties have seen or had access to these records, there is no justification for now withholding such information from the requestor pursuant to section 552.103(a). Furthermore, 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 questions about this ruling, please contact our office.

Sincerely



June B. Harden
Assistant Attorney General
Open Records Division

JBH/ch

Ref: ID#129360

Encl. Marked documents

cc: Ms. Linda Royer
1108 W. Virginia Street
McKinney, Texas 75069
(w/o enclosures)