



December 12, 2001

Mr. Cary L. Bovey  
Attorney for the City of Bartlett  
Law Office of Cary L. Bovey  
600 Round Rock West Drive, Suite 603  
Round Rock, Texas 78681

OR2001-5808

Dear Mr. Bovey:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 156086.

The City of Bartlett (the "city"), which you represent, received a request for (1) city council meeting minutes for the past two years; (2) information relating to current and former mayors and city council members; and (3) information relating to liability insurance coverage for the mayor and council members. You state that the city will release information that is responsive to item nos. 1 through 5 of this request. You assert that the city need not respond to item nos. 6 through 8 of the request. You claim that information responsive to item nos. 9 and 10 of the request is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you raise and have reviewed the information you submitted.

Initially, we address your assertion that the city need not respond to item nos. 6 through 8 of this request. You inform us that the city has no records that are responsive to item nos. 6, 7, and 8, which request the occupations of the current mayor and council members and the names of all mayors and council members for the past 15 years. You contend that the city is being asked to research its records and create new documents that contain the requested information. You state that a response to item nos. 6 through 8 would require the city to compile or assemble new information. We agree that chapter 552 of the Government Code does not require the city to answer factual questions, perform legal research, or create new information in responding to this request. The city must make a good faith effort, however, to relate this request to information that the city holds or to which it has access. See *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.

payments and threatened to sue if the payments were not made promptly, *see* Open Records Decision No. 346 (1982); and (3) threatened to sue on several occasions and hired an attorney, *see* Open Records Decision No. 288 (1981).

You inform this office that, prior to the city's receipt of this request for information, the city council had voted to pursue legal action against the requestor. You state that the city has retained counsel for the purpose of pursuing this litigation. You represent to this office that the information responsive to item nos. 9 and 10 of the request is related to the prospective litigation. Based on your representations, we find that the information at issue is related to anticipated litigation to which the city will be a party and that the city reasonably anticipated this litigation on the date of its receipt of this request. Therefore, we conclude that the city may withhold the information that is responsive to item nos. 9 and 10 at this time under section 552.103.

In reaching this conclusion, we assume that the city does not seek to withhold any information that the opposing party to the litigation has seen or to which the opposing party already has had access. The purpose of section 552.103 is to enable a governmental body to protect its position in litigation by forcing a party seeking information relating to the litigation to obtain it through discovery procedures. *See* Open Records Decision No. 551 at 4-5 (1990). If the opposing party to the anticipated litigation has seen or had access to information relating to the litigation, through discovery or otherwise, then there is no interest in withholding that information from public disclosure under section 552.103. *See* Open Records Decision Nos. 349 (1982), 320 (1982). We also note that the applicability of section 552.103 ends once the related litigation concludes or is no longer reasonably anticipated. *See* Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

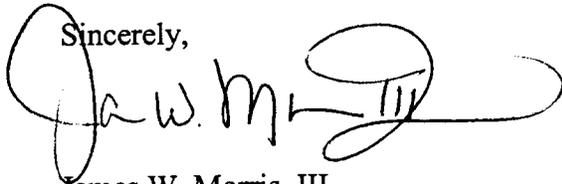
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'J.W. Morris III', with a large, stylized flourish extending to the right.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/sdk

Ref: ID# 156086

Enc: Submitted documents

c: Mr. R.E. Wallace  
The Wallace Group, Inc.  
P.O. Box 22007  
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(w/o enclosures)