



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 18, 2010

Mr. Leonard V. Schneider
Ross, Banks, May, Cron & Cavin, P.C.
2 Riverway, Suite 700
Houston, Texas 77056-1918

OR2010-02441

Dear Mr. Schneider:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 369229.

The City of Huntsville (the "city"), which you represent, received a verbal request for correspondence, memos, and e-mails between the city attorney, members of the city council, and members of the city staff related to the Chamber of Commerce during a specified period of time. You state the city has released some of the responsive information. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.106, 552.107, 552.111, and 552.137 of the Government Code and privileged under Texas Rule of Evidence 503 and Texas Rule of Civil Procedure 192.5. We have considered the submitted arguments and reviewed the submitted information. We have also received and considered comments submitted by the requestor. *See Gov't Code § 552.304* (interested party may submit comments stating why information should or should not be released).

Initially, we address the requestor's assertion that the verbal request at issue was not a new request for information but instead was an inquiry into the status of the requestor's July 8, 2009 request. The city states the verbal request is a new request for information because the requestor withdrew his July 8 request. The city explains it provided the requestor with a cost estimate for the information responsive to the July 8 request. In response to the cost estimate, the city asserts the requestor withdrew his July 8 request and made a new request

on August 5, 2009.¹ However, the requestor states he did not withdraw the July 8 request when submitting the August 5 request. Whether the requestor withdrew the July 8 request for information is a question of fact. This office cannot resolve disputes of fact in its decisional process. *See* Open Records Decision Nos. 592 at 2 (1991), 552 at 4 (1990), 435 at 4 (1986). Where a fact issue cannot be resolved as a matter of law, we must rely on the facts alleged to us by the governmental body requesting our opinion, or upon those facts that are discernible from the documents submitted for our inspection. *Id.* Based on the city's representation that the requestor withdrew his July 8 request, we conclude the request at issue, which the city states was made on November 10, 2009, is a new request and the July 8 request was withdrawn. Accordingly, we will address the city's arguments with respect to the November 10 request.

The city argues the requestor made a verbal request for the same information as the July 8 request on November 10. Section 552.301(a) of the Government Code provides the following:

A governmental body that receives a *written* request for information that it wishes to withhold from public disclosure and that it considers to be within one of the exceptions under Subchapter C must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions.

Gov't Code § 552.301(a) (emphasis added). The duty to request a decision from this office as to whether information may properly be withheld under the Act does not arise until the governmental body receives a written request for the information. *See id.* Consequently, the verbal request the city received on November 10 did not trigger the requirements of section 552.301 of the Government Code. Therefore, this office has no jurisdiction to rule on whether the submitted information is subject to disclosure under the Act. As our ruling is dispositive, we do not address the city's arguments against disclosure of the submitted information.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free,

¹We note the August 5 request was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2009-15185 (2009) on October 26, 2009.

at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'Sarah Casterline', with a long horizontal flourish extending to the right.

Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/eeg

Ref: ID# 369229

Enc. Submitted documents

c: Requestor
(w/o enclosures)