



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 22, 1994

Ms. Nancy O. Williams
City Attorney
City of Gainesville
P.O. Box 1504
Gainesville, Texas 76241-1504

OR94-741

Dear Ms. Williams:

You have asked 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# 28975.

The City of Gainesville received the following request for information:

Pursuant to the Open Records Act of the State of Texas, I request that you provide all copies of records arising from the Public Works Department of the City of Gainesville, relating to street repairs, street cuts, reports [of] defects in the street, as all are applicable to Throckmorton Street between Broadway and Scott Street, on or before August 15, 1994.

I would appreciate any work orders, notices of repair, notice of defects, as above requested, within 10 days of the date of this letter.

You contend that the requested information is excepted from disclosure under sections 552.103(a) and 552.111 of the Government Code. We will address your arguments.

Section 552.103(a) provides an exception from disclosure if the governmental entity demonstrates that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d

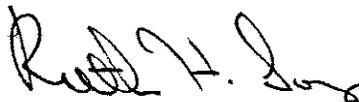
individual has hired an attorney who demands damages and threatens to sue the governmental entity. Open Records Decision No. 551 at 2. Our review of the request letter submitted to this office shows that the attorney does not ask for damages or threaten to sue. Since you have presented no other facts that indicate litigation is reasonably anticipated, the city has not met its burden of showing the applicability of section 552.103(a).

You also contend that the requested records are excepted from disclosure under section 552.111. Section 552.111 excepts from disclosure inter- or intra-agency communications "consisting of advice, recommendations, opinions, and other material reflecting the deliberative or policymaking processes of the governmental body." Open Records Decision No. 615 (1993) at 5. Section 552.111 does not except from disclosure factual information. *Id.* The records submitted to this office do not contain advice, opinion, or recommendation, but rather factual information that is not excepted from disclosure under section 552.111.

You assert that if this open records request had been made through the discovery process, the city would object to it on several grounds. You contend that "[i]n fairness to the city, and in an effort not to permit the circumvention of the discovery process" the city should be allowed to withhold the requested records from disclosure. We note that chapter 552 serves a different purpose than discovery rules. Attorney General Opinion JM-1048 (1989) at 2. Chapter 552 governs the public's right of access to information held by governmental entities, but does not create new discovery privileges or shield information from public disclosure on the basis of discovery privileges. *Id.*; Open Records Decision No. 575 (1990) at 2.

Since the requested records are not excepted from disclosure under either section 552.103(a) or 552.111, they must be released to the requestor. We are resolving this matter with an informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Government Section

RHS/LRD/rho

Ref.: ID# 28975