



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

June 21, 1995

Ms. A. Lynn Nunns  
Assistant City Attorney  
City of Carrollton  
P.O. Box 110535  
Carrollton, Texas 75011-0535

OR95-406

Dear Ms. Nunns:

You have asked this office to determine if 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# 24333.

The City of Carrollton (the "city") received a request from an attorney, on behalf of his client, for information about the existence and amount of the city's liability insurance. The city has already provided the requestor two city ordinances responsive to the request. One ordinance concerns the city's self-insurance and risk management program and the other concerns the city's officer and employee liability plan. Your letter indicates that, if any information about insurance coverage other than the ordinances exists, it is excepted from disclosure pursuant to sections 552.101 and 552.103(a) of chapter 552.

Section 552.101 provides an exception for information "considered to be confidential by law, either constitutional, statutory, or by judicial decision." You assert that information about the existence or amount of insurance held by the city is confidential under section 101.104 of the Civil Practice and Remedies Code, which provides:

(a) Neither the existence nor the amount of insurance held by a governmental unit is admissible in the trial of a suit under this chapter.

(b) Neither the existence nor the amount of the insurance is subject to discovery.

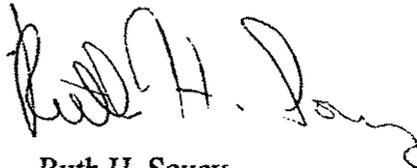
This provision is limited to civil discovery and the admissibility of evidence in a lawsuit against a governmental unit such as the city. *See* Civ. Prac. & Rem. Code §§ 101.001(2) (governmental unit includes cities), 101.102(b) (suit brought under chapter must name a governmental unit). This statute does not make information confidential for purposes of chapter 552. *See* Open Records Decision No. 551 (1990) at 3 (provisions of section 101.104 "are not relevant to the availability of the information to the public").

We note that a governmental body must make a good faith effort to relate a request to information held by it. Open Records Decision No. 87 (1975). However, a governmental body is not required to provide information not in its possession. Open Records Decision No. 561 (1990) at 9. Your letter to this office stated that records "reflecting the existence or limits or primary or excess insurance coverage maintained by the City, if any" would be submitted to this office for review. However, you did not submit to this office for review any documents responsive to the request other than the two ordinances already released to the requestor.

Section 552.103(a) provides an exception for information which is related to pending or reasonably anticipated litigation. *See* Open Records Decision Nos. 551 (1990) at 4, 437 (1986) at 3, 328 (1982) at 1 ("mere chance" of litigation will not trigger section 552.103). However, we cannot determine that section 552.103(a) is applicable when no responsive documents have been submitted to this office. Therefore, because you have not met your burden of showing the applicability of section 552.103(a), the documents at issue must be released.

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 under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office

Yours very truly,



Ruth H. Soucy  
Assistant Attorney General  
Open Government Section

RHS/MRC/rho

Ref.: ID# 24333

cc: Mr. Gary D. Lykins  
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