



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 28, 1995

Ms. Barbara E. Roberts
City Attorney
City of Galveston
P.O. Box 779
Galveston, Texas 77553-0779

OR95-882

Dear Ms. Roberts:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. We assigned your request an identification number, ID# 31645.

The City of Galveston (the "city") has received a request for information relating to various matters, including the city's towing ordinance, state laws concerning the auctioning of towed vehicles, and the complaint against Arnold Shields that resulted in a warrant for his arrest. You believe section 552.111 of the Government Code excepts eight of the requested items from required public disclosure. You believe section 552.108 of the Government Code excepts an additional item from required public disclosure.¹ We assume the city has released or will release to the requestor any remaining items responsive to his request.

Section 552.111 of the Government Code authorizes a governmental body to withhold from required public disclosure "[a]n interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." This office construed the statutory predecessor to section 552.111 to except from disclosure "only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the deliberative or policymaking processes of the governmental body at issue." Open Records Decision No. 615 (1993) at 5. Section 552.111 does not except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. *Id.*

¹Your letter to this office cites section 552.100 of the Government Code as the exception applicable to item nine. Section 552.100 is nonexistent. From your description of the reasons item nine should be excepted, we understand you to refer to section 552.108.

We have examined items one through eight, which you submitted for our review. *See Gov't Code § 552.303* (requiring governmental body that requests attorney general decision on open records request to supply to attorney general specific information requested). Items one through eight consist of internal memoranda from the city attorney's office to other city personnel. Some of the material in the memoranda constitutes advice, opinion, or recommendation reflecting the city's policymaking processes. The city may withhold this information.

On the other hand, some of the material in the memoranda simply restates the questions asked. These portions of the documents are purely factual; furthermore, they are separable from the advice, opinion, and recommendation. The city must release the *factual portions* to the requestor. *We have marked a sample of the internal memoranda to show the type of information the city may withhold.*

We next consider whether the city may withhold item nine under section 552.108 of the Government Code. Item nine consists of a list of license numbers and vehicle numbers. *You aver that the information in item nine pertains to an on-going investigation.*

Section 552.108 excepts from required public disclosure “[a] record of a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime.” Section 552.108 also excepts “[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution.” In general, section 552.108 applies to evidentiary information relating to a pending criminal case.

You have not indicated that item nine is a record of a law enforcement agency or prosecutor. In addition, while you have indicated that item nine is pertinent to an ongoing investigation, you have failed to indicate whether the investigation is criminal in nature. Accordingly, you have not demonstrated that section 552.108 applies to item nine. We must conclude that the city must release the information to the requestor.

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 may not be relied upon as a previous determination under section 552.301 of the Government Code regarding any other records. If you have questions about this ruling, please contact this office.*

Yours very truly,



Kimberly K. Oltrogge
Assistant Attorney General
Open Government Section

Ref: ID# 31645

Enclosures: Marked documents

cc: Mr. Blu Shields
P.O. Box 2550
Galveston, Texas 77553-2550
(w/o enclosures)