



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

October 5, 1995

Ms. Cathy Locke  
City Attorney  
City of College Station  
P.O. Box 9960  
College Station, Texas 77842-9960

OR95-1042

Dear Ms. Locke:

You ask 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# 35758.

The City of College Station (the "city") received a request for copies of two leases to which the city is a party. You claim that the request was improperly directed and that the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claimed and have reviewed the documents at issue.

You claim that the request, directed to the attorney representing the city in a condemnation proceeding to which you claim the requested information relates, was not directed to the custodian of records as defined by the Government Code and that consequently the request was improperly directed. We note that the request is addressed to you, the city attorney. We disagree with your contention. A request for public information under the Open Records Act is not required to be addressed to the officer of public records. The Open Records Act does not require "that a requestor use any 'magic' words such as naming the chief administrative officer, so long as the request reasonably can be identified as a request for public records." Open Records Decision No. 497 (1988) at 3; *see* Open Records Decision No. 44 at 2 (1974) ("If a written communication to an agency can be reasonably judged a request for public information, it is a request within the terms of the Open Records Act"). This office has recognized that chief administrative officers would not be personally handling all requests for records and would delegate that

responsibility to agents. Open Records Decision No. 497 (1988); *see* Open Records Decision Nos. 576 (1990), 44 (1974). An attorney is an agent for the client she represents. In this case you are the city attorney. Therefore, we conclude that the request was not improperly directed.

Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state is or may be a party. The city has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing 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 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. The city must meet both prongs of this test for information to be excepted under section 552.103(a).

You state that the city filed an eminent domain proceeding on April 21, 1995. Therefore, the city has met the first prong of the section 552.103(a) test. You state that the documents requested are "necessary for [the requestor's] appraisal for the scheduled hearing." However, at least one of the documents was publicly filed in the Brazos County clerk's office. Section 552.007 of the Government Code prevents selective disclosure of records to the public. This office has determined that once a governmental body has selectively disclosed information relating to litigation, the governmental body is precluded in most cases from invoking section 552.103(a) to withhold that information from others. Open Records Decision Nos. 454 (1986), 349 (1982), 320 (1982); *see* Open Records Decision Nos. 597 (1991), 551 (1990), 511 (1988). Therefore, the city may not withhold from disclosure the lease that was publicly filed. We assume that, although the second submitted lease is not file-marked, it also was publicly filed. Therefore, it also may not be withheld.<sup>1</sup> We note that the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

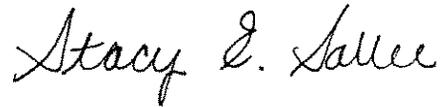
We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records.

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<sup>1</sup>We note that if our assumption is incorrect and the opposing party has not seen or had access to the second lease and it has not been publicly disclosed, the city may withhold that lease from disclosure under section 552.103(a).

If you have questions about this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee  
Assistant Attorney General  
Open Records Division

SES/rho

Ref.: ID# 35758

Enclosures: Submitted documents

cc: James Connor Smith, MAI, ARA  
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(w/o enclosures)