



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 20, 1996

Mr. Keith Stretcher
City Attorney
City of Midland
P.O. Box 1152
Midland, Texas 79702-1152

OR96-0360

Dear Mr. Stretcher:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 38825.

The City of Midland (the "city") received a request for "a date of notes taken and the author of the notes as well as questions that were asked of the men/women interviewed" and "a list of any and all the people that Mayor Burns, Glen Hackler, David Hunter, Harvey Hansen, Mike Butler, Jesse Solano, Ray Navarro and you as well as any other people not listed that you have spoken with regarding this grievance and any and all notes or paperwork that has been generated . . . [and] a list of questions that were asked of each of these people and their responses . . . [and] all dates and times of those meetings."¹ You claim that the requested information does not exist except as has already been provided to the requestor. You further claim that certain documents are 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.²

In two previous rulings, Open Records Letter Nos. 95-996 (1995) and 95-1276 (1995), this office addressed these requests, and determined that the city could not

¹We note that the requestor has made four requests for information. Three of them were for the same information addressed here. The fourth request was for a list of federal agencies that give the city money. You state that the city has provided this list to the requestor.

²We note that the requestor also seeks copies of the original letters requesting rulings from this office. You state that the city has released this information to the requestor.

withhold the requested information under its claimed exceptions. You inform us that the city has provided the requestor with all the information it had at the time the requests were received. You state:

In the present instance, except for the notes previously provided to the Requestor's spouse, the information sought, to the extent it exists at all, is contained only in the memories of the people who may have asked the questions of the people the Requestor wishes the City to identify. As a result, such information does not fall within the definition of 'public information' found in Tex. Govt. Code § 552.002, which definition contemplates information that is [in existence] in some tangible format. The Texas Open Records Act is not a vehicle which allows a member of the public to compel an employee or elected official of a governmental body to place in written form a narrative of the actions he or she may or may not have taken with respect to the business of the governmental body when the memorialization of such actions is not otherwise required by State law.

Chapter 552 of the Government Code does not require a governmental body to make available information which did not exist at the time the request was received. Open Records Decision No. 362 (1983); *see* Open Records Decision No. 452 (1986) (document not within chapter 552's purview if it does not exist when governmental body receives a request for it). A governmental body is not required to prepare new information to respond to a request for information. Open Records Decision No. 605 (1992), 572 (1990), 416 (1984). Finally, chapter 552 of the Government Code does not require a governmental body to answer factual questions. Open Records Decision No. 555 (1990), 379 (1983). However, a governmental body has a duty to make a good faith effort to relate a request for information to information the governmental body holds. Open Records Decision No. 561 (1990) at 8. If the city holds information from which the requested information can be obtained, the city must provide that information to the requestor unless it is otherwise excepted from disclosure.

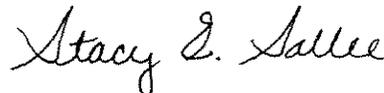
Open Records Letter No. 95-1276 (1995) was issued on November 21, 1995. After that date, the city received additional documents that the city claims are related to a pending notice of charge of discrimination filed by the requestor's spouse with the Equal Employment Opportunity Commission ("EEOC"). The city is treating the requestor's current correspondence as a request for this information. The city claims that this information is excepted from disclosure under section 552.103(a) of the Government Code. 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 have submitted to this office for review a complaint filed with the Equal Employment Opportunity Commission ("EEOC") by Mr. John Cox. This office has previously held that a pending complaint before the EEOC indicates a substantial likelihood of potential litigation. Open Records Decision Nos. 386 (1983), 336 (1982), 281 (1981). Therefore, the city has met the first prong of the section 552.103(a) test. We also conclude that submitted documents are related to the anticipated litigation. Therefore, the city may withhold those documents from required public disclosure under section 552.103(a). We note that when the opposing party in the litigation has seen or had access to any of the information in these records, there is no justification for withholding that information from the requestor pursuant to section 552.103(a). Open Records Decision Nos. 349 (1982), 320 (1982). In addition, 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 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee
Assistant Attorney General
Open Records Division

SES/ch

Ref.: ID# 38825

Enclosures: Submitted documents

cc: Ms. Robin L. Cox
(w/o enclosures)