



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 31, 1996

Mr. Richard M. Abernathy
Abernathy, Roeder, Robertson & Joplin
P. O. Box 1210
McKinney, Texas 75069-1210

OR96-2020

Dear Mr. Abernathy:

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# 101458.

The City of Frisco (the "city"), which you represent, received a request for the following information relating to the zoning and annexation by the city of a particular tract of land:

- A. Copy of Comprehensive Zoning Ordinance #93-07-11, copy of annexation ordinance.
- B. Copy of annexation ordinance that annexed Dong Bu Lee property also known as the site of The Paradise Tub Club.

You have submitted to this office two documents, which you assert are responsive to the request. However, you contend that the city may withhold the requested information from required public disclosure based on section 552.103 of the Government Code. We have considered the exception you claim and have reviewed the documents at issue.

Section 552.103(a), the "litigation exception," excepts from required public disclosure information:

- (1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

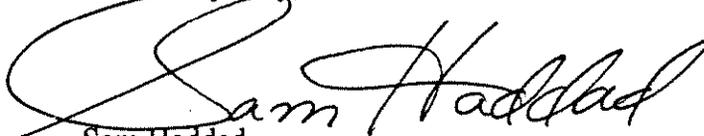
(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

Section 552.103(a) was intended to prevent the use of the Open Records Act as a method of avoiding the rules of discovery in litigation. Attorney General Opinion JM-1048 (1989) at 4. However, this office has also ruled that where compelling public policy based on constitutional considerations or law outside the Open Records Act requires public access to information, its relationship to litigation cannot justify withholding it. Open Records Decisions Nos. 551 (1990) (municipal ordinance adopted by city); *see also* 221 (1979) (minutes of public meetings), 146 (1976) (election returns), 43 (1974) (information made public by statute). This policy is based on the concept of due process which requires that the people have notice of the law. *Building Officials & Code Admin. v. Code Technology, Inc.*, 628 F.2d 730, 734 (1st Cir. 1980). Given this constitutional consideration, it is difficult to hypothesize a circumstance that would bring a law or ordinance within an exception to public disclosure.

You submitted to this office a copy of the city's zoning ordinance number 93-07-11 and annexation ordinance number 91-12-14. In fact, the information submitted for our inspection as responsive to the request consists of municipal ordinances. Moreover, in reviewing the submitted information, it is evident that these provisions have been adopted by the city. Open Records Decision Nos. 551 (1990) at 2-3 (laws or ordinances are open records), 221 (1979) at 1 ("official records of the public proceedings of a governmental body are among the most open of records"). Thus, it is difficult to conceive of a more open record. Therefore, we conclude that the information submitted for our inspection must be released.¹

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,



Sam Haddad
Assistant Attorney General
Open Records Division

SH/cbh

Ref.: ID# 101458

¹The law, binding upon every citizen, is free for publication to all. *Banks v. Manchester*, 128 U.S. 244, 253 (1888).

Enclosures: Submitted documents

cc: Ms. Rita Henderson
P. O. Box 317
Valleyview, Texas 76272
(w/o enclosures)