



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 25, 1996

Ms. Grace Casstevens
Casstevens & Casstevens
3103 Bee Caves Road, Suite 245
Austin, Texas 78746

OR96-2218

Dear Ms. Casstevens:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 34496.

You represent a number of cities that are involved in litigation with GTE Southwest Incorporated ("GTESW"). The cities¹ received requests for the following information regarding contracts between the cities and GTESW:

1. The city Charter;
2. The city council's rules and procedures;
3. Minutes of any city council meetings discussing GTE Southwest Incorporated or General Telephone Company of the Southwest or any of their predecessors (collectively referred to as "GTESW");
4. Secretarial handwritten or shorthand copies of minutes of any city council meetings discussing GTESW;
5. Audit reports performed by anyone regarding GTESW;
6. All resolutions and/or ordinances concerning GTESW; and
7. All agreements between the city and GTESW.

¹The cities receiving requests are Weimar, Seymour, Rusk, Ralls, Lone Star, Highland Village, El Lago, Denton, Daingerfield, Crosbyton, Comanche, College Station, and Brownfield.

You have enclosed representative samples of the requested information² and claim that the information is excepted from required public disclosure under section 552.103 of the Government Code. We have considered the exception you claim and have reviewed the submitted documents.

Section 552.103(a), the "litigation exception," excepts from required public disclosure information relating to litigation to which the cities are or may be a party. The cities have the burden of providing relevant facts and documents to show that section 552.103(a) is applicable in a particular situation. In order to meet this burden, the cities must show 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 cities must meet both prongs of this test for information to be excepted under section 552.103(a). Once the litigation has concluded, section 552.103(a) is no longer applicable. Open Records Decision No. 551 (1990) at 4. In addition, if the opposing party in litigation has seen or had access to the requested information, there is no justification for withholding the information from the requestor. *See* Open Records Decision Nos. 349 (1982), 320 (1982).

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).

You submitted the petitions from two pending lawsuits and have shown that the requested information relates to the suits. Thus, the audit reports may be withheld based on section 552.103(a). However, the remainder of the information submitted for our inspection as responsive to the request consists of city charters, municipal ordinances, and minutes from city council meetings. These provisions, which have been adopted by the cities, must

²We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

be disclosed. 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"). Therefore, we conclude that, except for the audit reports, the information submitted for our inspection 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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/rho

Ref.: ID# 34496

Enclosures: Submitted documents

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(w/o enclosures)