



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

May 20, 1998

Mr. Jason C. Marshall  
Nichols, Jackson, Dillard, Hager  
& Smith, L.L.P.  
1800 Lincoln Plaza  
500 North Akard  
Dallas, Texas 75201

OR98-1281

Dear Mr. Marshall:

You ask this office to reconsider our ruling in Open Records Letter No. 98-0917 (1998). Your request for reconsideration was assigned ID#116329.

The City of Coppell (the "city"), which your office represents, received a request for "all documentation" concerning specific incidents. In Open Records Letter No. 98-0917 (1998), this office concluded in part that the city could not withhold much of the information under section 552.108 of the Government Code because you did not timely request a ruling from this office. In your request for reconsideration, you contend that the city's policy of requiring a bond for certain requests for information before taking any action on the request is permissible under the Open Records Act (the "act"). You further explain that the General Services Commission, the state agency that resolves cost issues, has stated that the city's policy is permissible under the act.

In your original brief to this office, you state that although "Request No. 4034 was received by the City on December 12, 1997, the request was not processed until December 29, 1997, pursuant to the City's written policy regarding the processing of additional Public Information Requests when a requester has failed to pay for the production of previously requested information." You explain the city's policy as follows:

If a requesting party, on one or more occasion, requests information from the City but subsequently elects not to pay for the costs associated with the requests, the requesting party will be required to submit a deposit or bond for payment of the anticipated costs of the preparation of any subsequent requests made by that requesting party prior to the City taking action on any requests on which the City may incur costs.

As we concluded in Open Records Letter No. 98-0917 (1998), we do not believe that the city's policy is authorized under the act. Although, it may be permissible for the city to require a requestor to pay for previously requested information prior to providing additional information, we do not believe that the city may toll the deadline for requesting a ruling from the attorney general until the requestor has paid for previously requested information. A governmental body must request a ruling within ten days of receiving a request for information. See Gov't Code § 552.301. Generally, the ten-day deadline may not be tolled unless a governmental body is clarifying the request for information with the requestor. Open Records Decision No. 333 (1982).

A governmental body may not charge for the time it takes to determine whether it will raise exceptions to disclosure under the act. 1 T.A.C. §111.63(d)(3)(A). Furthermore, a governmental may not charge personnel time to research or prepare a request for a ruling pursuant to section 552.301 of the Government Code. 1 T.A.C. §111.63(d)(3)(B). Thus, we believe that the city may request prepayment, subject to the cost provisions of the act and the Texas Administrative Code, for information it intends to release. However, the city may not request prepayment prior to requesting a ruling from this office for information the city wishes to withhold. The act does not expressly authorize a city to toll the deadline for requesting a ruling, and we do not believe that the cost provisions implicitly permit a governmental body to do so to satisfy an outstanding bill for previously requested information. If the estimated cost of providing the copies exceeds \$100, you may require a deposit or bond from the requestor. Gov't Code § 552.263(a). Furthermore, we believe that the act permits the city to request payment for previously requested information prior to providing additional information to the requestor. You may not, however, defer requesting a ruling from the attorney general until the requestor pays for previously requested information.

Under the facts presented and based on your assertions, we note that you did not submit your request for a decision to this office within ten business days of receiving the request for information. We, therefore, affirm Open Records Letter No. 98-0917 (1998) in its entirety. If you have any questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay  
Deputy Chief  
Open Records Division

LRD/rho

Ref.: ID# 116329

Enclosures: Submitted documents

cc: Mr. Doyle Calfey  
P.O. Box 191  
Coppell, Texas 75019-0191  
(w/o enclosures)