



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

July 31, 1998

Ms. Nanette G. Williams  
Assistant City Attorney  
City of El Paso  
Office of the City Attorney  
2 Civic Center Plaza  
El Paso, Texas 79901-1196

Mr. José R. Rodríguez  
County Attorney  
El Paso County, Texas  
500 E. San Antonio, Room 203  
El Paso, Texas 79901

OR98-1819

Dear Ms. Williams and Mr. Rodríguez:

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# 116998.

The City of El Paso (the "city") received a request for the following information:

1. All open meeting notices posted by the City of El Paso that specifically mention tax rate adoption for tax years 1984 through 1994.
2. All contracts with law firms or lawyers for the collection of taxes into which the City of El Paso has entered for the collection of delinquent taxes owed for tax years 1984 through 1994.
3. All resolutions or other orders whereby the City of El Paso set its tax rate for tax years 1984 through 1994.
4. All resolutions or other orders whereby the City of El Paso elected or otherwise decided to impose the additional penalty as authorized by Section 33.07(d) of the Texas Property Tax Code for tax years 1984 through 1994.

The County of El Paso received a similar request. Both requests are addressed within this open records letter ruling. The city indicates that it originally agreed to release items two, three and four to the requester.<sup>1</sup> The county has not released any of the information to the requestor. Both the city and county now claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

To show that section 552.103(a) is applicable, a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to the 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 governmental entity must meet both prongs of this test for information to be excepted under section 552.103(a).

However, the attorney general has not considered whether any provision of section 552.022 of the Open Records Act codify a constitutionally-based requirement that certain kinds of governmental records be accessible to the people. In fact, the open records decisions of the attorney general have recognized, however that some records *cannot* be concealed from the public. In Open Records Decision No. 551 (1990), the attorney general declared that "it is difficult to conceive of a more open record" than a city ordinance because the concept of due process requires that the people have notice of the law. Open Records Decision No. 551 (1990) at 2-3. Additionally, as stated in Open Records Decision No. 221 (1979), the "official records of the public proceedings of a governmental body are among the most open of records." None of the exceptions to the open Records Act may be used to bar public access to such information.<sup>2</sup> You must release the information requested.<sup>3</sup>

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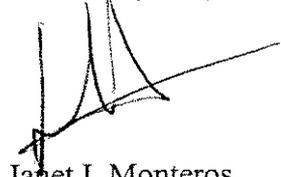
<sup>1</sup>The city indicates that it does not have the open meetings notices from 1984 through 1994. A governmental body is not required to produce information which it does not possess. However, we note that you state that other city departments may have copies of old agendas.

<sup>2</sup>Open Records Decision No. 623 (1994); *see also* Open Records Decision No. 451 (1986) (specific statute that affirmatively requires release of information at issue prevails over litigation exception of Open Records Act); *cf. Houston Chronicle Publ'g Co. v. Woods*, 949 S.W.2d 492 (Tex. App.--Beaumont 1997, orig. Proceeding)(concerning public disclosure of affidavits in support of executed search warrants). Additionally, we observe that the Open Records Act's exceptions may not be used to withhold information deemed public under separate statute. Open Records Decision Nos. 623 (1994), 525 (1989), 451 (1986).

<sup>3</sup>Chapter 552 of the Government Code imposes a duty on a governmental body seeking an open records decision pursuant to section 552.301 to submit that request to the attorney general within ten business days after the governmental body's receipt of the request for information. The time limitation found in section 552.301 is an express legislative recognition of the importance of having public information produced in a timely fashion. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ). When a request for an open records decision is not made within the time period prescribed by section 552.301, the requested information is presumed to be public. *See* Gov't Code § 552.302. This presumption of openness can only be overcome by a compelling demonstration that the information should not be made public. *See*,

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,



Janet I. Monteros  
Assistant Attorney General  
Open Records Division

JIM/nc

Ref.: ID# 116998

Enclosures: Submitted documents

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can only be overcome by a compelling demonstration that the information should not be made public. *See, e.g.*, Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests). We note the county received the request on April 27, 1998 and submitted the request to this office after ten business days. However, we will not address the county's waiver of the section 552.103 due to the public nature of documents requested in this instance.