



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 15, 1994

Mr. Edward H. Perry
Assistant City Attorney
Office of the City Attorney
City of Dallas
City Hall
Dallas, Texas 75201

OR94-067

Dear Mr. Perry:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code (formerly V.T.C.S. article 6252-17a).¹ Your request was assigned ID# 22153.

The City of Dallas received an open records request for information pertaining to interlocal agreements between the cities of Dallas, Wilmer, Hutchins, and Lancaster. You indicate that you have released some of the information to the requestor, but you seek to withhold all or parts of several documents. You argue that all or parts of these documents are excepted from disclosure under sections 552.107 and 552.111 (formerly sections 3(a)(7) and 3(a)(11)) and by what you characterize as the "personal notes" exception.

You first contend that exhibits C, D, E, F, and G contain information excepted from disclosure under section 552.111. Section 552.111 excepts from required public disclosure "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." This section excepts from disclosure only those internal agency communications consisting of advice, recommendations, and opinions reflecting the policymaking processes of the governmental body at issue. This section does not protect facts or written observations of facts. Open Records Decision No. 615 (1993) at 5. We have reviewed the portions of the

¹The Seventy-third Legislature codified the Open Records Act as chapter 552 of the Government Code and repealed article 6252-17a, V.T.C.S. See Acts 1993, 73d Leg., ch. 268, §§ 1, 46. The codification of the Open Records Act in the Government Code is a nonsubstantive codification. *Id.* § 47.

documents you submitted for review that you claim are excepted from disclosure under section 552.111 and conclude that some of the information you have marked pertains to the policymaking function of the city. Therefore, you may withhold under section 552.111 the following information:

1. All the portions of exhibit C that you have marked.
2. The bracketed sentence on page 7 of exhibit D.
3. All of page 8 of exhibit D.
4. The bracketed material on pages 1, 6, and 7 of exhibit E.²
5. All the portions of exhibit F that you have marked.

You also claim that one sentence on page 3 of exhibit D and portions of exhibit G are excepted from required public disclosure as material covered by the attorney-client privilege under section 552.107.³ When an attorney is acting in the capacity as a legal advisor, section 552.107 excepts from disclosure information that reveals client confidences to the attorney or that reveals the attorney's legal advice or opinion given to the client. Open Records Decision Nos. 589 (1991) at 1; 574 (1990) at 3; 462 (1987) at 11. Notes made by an attorney are protected to the extent that they document client confidences or the attorney's legal advice or opinion communicated to the client. Open Records Decision No. 574 at 7.

We conclude that neither the sentence on page 3 of exhibit D nor the portions of exhibit G that you marked are excepted from disclosure under section 552.107. Rather than revealing a client confidence or an attorney's advice, the sentence on page 3 of exhibit D reveals information that is public. With regard to exhibit G, you have failed to establish that the attorney's notes reflect either client confidences or the attorney's legal advice or opinion communicated to the client. Under the Open Records Act, a governmental body has the burden of showing how and why an exception to required public disclosure applies to particular information. If a governmental body fails to make this showing and the records do not establish on their face that an exception applies, then the information must be released. Open Records Decision No. 363 (1983). You have

²Page 2 of exhibit E contains the same memorandum as page 1. Therefore, you may withhold the same material on both pages 1 and 2.

³You also claim that portions of other documents are excepted from disclosure under section 552.107. However, we have already concluded that this information is excepted from disclosure under section 552.111. Therefore, we do not need to address whether the same information is excepted from disclosure under section 552.107.

stated merely that exhibit G contains "handwritten notes by an attorney in our office concerning legal issues relating to this ILA." The mere fact that an attorney representing the city took the notes is not sufficient to establish that the notes are excepted from disclosure under section 552.107. Furthermore, neither your statement nor the records themselves establish that the notes reflect client confidences or the attorney's legal advice or opinion communicated to the client. Therefore, you may not withhold this information under section 552.107.

Finally, you claim that the handwritten notes in exhibits F and G constitute personal notes that do not need to be released under the Open Records Act.⁴ In previous Open Records Decisions, this office has concluded that handwritten notes in the sole possession of a public officer or employee and made by that public officer or employee solely for his or her own personal use are not public information subject to the Open Records Act. Open Records Decision Nos. 145 (1976) at 2; 116 (1975) at 2; 77 (1975) at 2. On the other hand, information used by a public officer or employee in the performance of official duties is generally public information. *See, e.g.*, Attorney General Opinion JM-1143 (1990) at 2. We conclude that the handwritten notes in both exhibits F and G constitute information used in the performance of official duties rather than notes made solely for the personal use of the employee who wrote them. These notes relate solely to the official business of the city and, thus, cannot be characterized as notes made solely for the personal use of the employee who made them. Therefore, they are public information subject to the Open Records Act and may be withheld only under one of the exceptions to required public disclosure contained in the Open Records Act.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Margaret A. Roll
Assistant Attorney General
Open Government Section

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⁴You claim that exhibits F and G are excepted from disclosure under the "personal notes exception." However, the Open Records Act contains no exception for personal notes. Therefore, we assume that you are referring to a few early opinions under the Open Records Act concluding that the "personal notes" of a public employee did not constitute public information subject to the Open Records Act.

Ref.: ID# 22153
ID# 22502

Enclosures: Submitted documents

cc: Ms. Nancy Moffett
3114 Mapleleaf Lane
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(w/o enclosures)