



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 15, 1994

Mr. David A. Talbot, Jr.
General Counsel
Office of the Governor
P.O. Box 12548
Austin, Texas 78711

OR94-366

Dear Mr. Talbot:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code (former V.T.C.S. article 6252-17a).¹ Your request was assigned ID# 25591.

The Office of the Governor received an open records request concerning a proposed Texas-Mexico border infrastructure agreement. Specifically, the requestor seeks:

all versions of a proposed agreement between Texas and Mexico regarding border infrastructure, including those versions reviewed by the governor's office since April 1, 1993. . . . [As well as] any notes, memos, telephone messages, electronic computer messages or other material related to, touching upon, reacting to or referring to the proposed agreement and any employees of the governor's office, including but not limited to Gov. Ann Richards, David Talbot, David Weiser, John Fainter and employees of the gubernatorial press office.

You contend that portions of the requested documents are excepted from required public disclosure under sections 552.107 and 552.111 of the Government Code.

¹The Seventy-third Legislature repealed V.T.C.S. article 6252-17a.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

Section 552.107(1) excepts from disclosure

information that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Rules of the State Bar of Texas.

Although section 552.107(1) excepts information within rule 1.05 of the Texas State Bar Disciplinary Rules of Professional Conduct, the rule cannot be applied as broadly as written to information that is requested under the Open Records Act. Open Records Decision No. 574 (1990) at 5. To prevent governmental bodies from circumventing the Open Records Act by transferring information to their attorneys, section 552.107(1) is limited to material within the attorney-client privilege for confidential communications; "unprivileged information" as defined by rule 1.05 is not excepted under section 552.107(1). Open Records Decision Nos. 574 at 5; 462 (1987) at 13-14 (explaining scope of attorney-client privilege). Furthermore, information that does not contain legal advice or opinion or reveal client confidences is not protected by section 552.107(1). Open Records Decision No. 574 at 3, 5.

You claim that the handwritten notes and the memoranda written by various attorneys are excepted from required public disclosure under section 552.107(1). You contend that "these documents are rife with legal analysis and attorney-client communications." We have examined the handwritten notes and memoranda and agree that some of the information contains legal advice or opinion or reveals client confidences and is excepted under section 552.107(1). For your convenience, we have marked those portions of the documents that may be withheld under section 552.107 of the Government Code. We note, however, that the notation of a name and phone number of another agency or attorney does not constitute legal advice or opinion or reveal client confidences. This type of information may not be withheld under section 552.107(1).

Section 552.111 excepts from disclosure "[a]n interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In a recent opinion that reexamined the section 552.111 exception, this office concluded that section 552.111 excepts from public disclosure

only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the deliberative or policymaking processes of the governmental body at issue. [It] does not except from disclosure purely factual information that is severable from the opinion portions of internal memoranda.

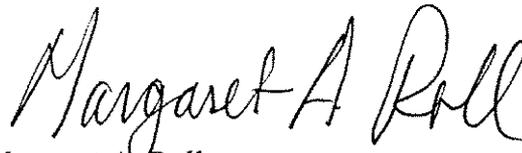
Open Records Decision No. 615 (1993) at 5 (copy enclosed). Furthermore, in order for information to come within the section 552.111 exception, the information must be related to the policymaking functions of the governmental body. *Id.* "An agency's

policymaking functions do not encompass routine internal administrative and personnel matters" *Id.*

You claim that the drafts of the Texas-Mexico Agreement and portions of the memoranda are excepted under section 552.111. We have examined the drafts of the proposed agreement regarding border infrastructure and conclude that they pertain to policymaking functions as discussed above. You may therefore withhold the drafts of the Texas-Mexico Agreement regarding border infrastructure under section 552.111 of the Government Code. We have marked the portions of the memoranda that may be withheld under section 552.111. As you raise no further exceptions to disclosure, the information that does not fall within the section 552.107(1) or section 552.111 exception must be released to the requestor.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with an 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

MAR/LBC/rho

Ref.: ID# 25591

Enclosures: Open Records Decision No. 615
Marked documents

cc: Mr. Gardner Selby
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(w/o enclosures)