



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 24, 1994

Mr. Burton F. Raiford
Commissioner
Texas Department of Human Services
P.O. Box 149030
Austin, Texas 78714-9030

OR94-668

Dear Commissioner Raiford:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code (formerly article 6252-17a, V.T.C.S.).¹ Your request was assigned ID# 19156.

The Texas Department of Human Services (the "department") received an open records request for "all documentation" (emphasis in original) of a meeting between the requestor and certain departmental employees. You state that only one existing document is responsive to the request: a memorandum from one of the department's attorneys to a regional administrator. You inform us that the department has released to the requestor the factual portions of the memorandum, which details the substance of the meeting in question. You seek to withhold the "advice, opinion, and recommendation" of the attorney contained in the memorandum under section 552.111 of the Government Code (former V.T.C.S. art. 6252-17a, § 3(a)(11)). You also seek to withhold this information under section 552.107 of the Government Code (former V.T.C.S. art. 6252-17a, § 3(a)(7)).

Section 552.111 of the Government Code excepts from disclosure interagency and intra-agency memoranda and letters, but only to the extent that they contain advice, opinion, or recommendation intended for use in the entity's policymaking process. Open Records Decision No. 615 (1993) at 5. The purpose of this section is "to protect from

¹The Seventy-third Legislature repealed article 6252-17a, V.T.C.S. Acts 1993, 73d Leg., ch. 268, § 46.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.

public disclosure advice and opinions *on policy matters* and to encourage frank and open discussion within the agency in connection with its decision-making processes." *Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.—San Antonio 1982, writ ref'd n.r.e.) (emphasis added). In Open Records Decision No. 615 at 5, this office concluded that

to come within the [section 552.111] exception, information must be related to the *policymaking* functions of the governmental body. An agency's policymaking functions do not encompass routine internal administrative and personnel matters [Emphasis in original.]

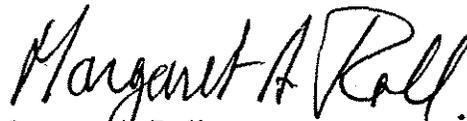
The memorandum in question concerns the resolution of various administrative and personnel matters falling outside of the policymaking functions of the department. As such, the department may not withhold the portions of the memorandum that you have marked as coming within the protection of section 552.111.

You also contend that the marked portions of the memorandum may be withheld under the attorney-client privilege in conjunction with section 552.107(1) of the Government Code. However, you raised this exception to required public disclosure long after the initial ten-day time period following the department's receipt of the open records request. *See* Gov. Code § 552.301.

Where an exception to public disclosure is not raised in a timely manner, the exception is generally waived unless there exists a "compelling" reason for withholding the information. *See* Open Records Decision No. 515 (1988) at 6; *see also* Open Records Decision No. 630 (1994) (mere fact that information is within attorney-client privilege does not constitute "compelling" reason for withholding information). You have not presented this office with compelling reasons as to why the requested information should be withheld from the requestor. Consequently, to whatever extent the information you have marked would have otherwise come within the protection of the attorney-client privilege, the department has waived the privilege by not raising this exception in a timely manner, and the department must release the memorandum in its entirety.

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 our office.

Yours very truly,



Margaret A. Roll
Assistant Attorney General
Open Government Section

Ref.: ID# 19156

Enclosure: Submitted document

cc: Mr. John R. Morgan
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(w/o enclosure)