



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 17, 1995

Mr. Michael C. Crowley
Christi, Berry & Dunbar
1700 North Stanton
El Paso, Texas 79902

OR95-281

Dear Mr. Crowley:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, Government Code chapter 552. We assigned your request ID# 30427.

The Housing Authority of the City of El Paso (the "housing authority"), which you represent, has received a request for information relating to a certain housing complaint. Specifically, the requestor seeks the following information:

1. Any and all correspondence relating to the complaint filed by Sheldon S. Wheeler, d.b.a. Texas Realty, against Ms. Emma Luna, Section 8 counselor;
2. Any and all documents relating to above referenced complaint written by Ms. Ginger Schmidt;
3. Any and all written responses by Ms. Emma Luna to Ms. Ginger Schmidt in reference to the cited complaint;
4. Any correspondence from Mr. Orlando Amador regarding the house at 10357 Hugg.

You seek to withhold some of the requested information, which you have submitted to us for review, and claim that such information is excepted from required public disclosure

"as party communications made in anticipation of litigation" and under the attorney-client privilege. We presume that the remaining requested information has been or will be made available to the requestor. See Open Records Decision No. 361 (1983).

You claim that the attorney-client privilege permits the housing authority to withhold a letter to you from the housing authority dated November 7, 1994. We need not address the applicability of the attorney-client privilege to this document, however, because this document is clearly not subject to the request for information. The request at issue here was made November 1, 1994, and received by the housing authority November 3, 1994. A governmental body need not treat a request as embracing information prepared after the request was made or to inform the requestor subsequently when the information does come into existence. Open Records Decision No. 452 (1986). Clearly, the request here does not embrace the letter which you seek to withhold under the attorney-client privilege. Accordingly, the Open Records Act does not require the housing authority to make this letter available to the requestor.

You also seek to withhold "intra-agency documents investigating the complaint" as "party communications made in anticipation of litigation." We assume that you seek to assert section 552.111 of the Government Code, which excepts an "interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office concluded that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body at issue. In addition, this office concluded that an agency's policymaking functions do not encompass internal administrative or personnel matters, because disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. Open Records Decision No. 615 (1993) at 5-6. However, section 552.111 does not except from disclosure purely factual information. *Id.* The information you seek to withhold as "party communications" was generated in response to a complaint made against the housing authority. We conclude that these records contain information consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the housing authority. This information has been marked and may be withheld from required public disclosure under section 552.111 of the Government Code. The remaining information on these records, however, is factual in nature and thus does not fall within section 552.111. Accordingly, except as marked, the requested information must be released.

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 upon as a previous determination under section 552.301 regarding any other records.

If you have questions about this ruling, please contact our office.

Yours very truly,

Loretta DeHay

Loretta R. DeHay
Assistant Attorney General
Open Government Section

LRD/GCK/rho

Ref.: ID# 30427

Enclosures: Marked documents

cc: Mr. Sheldon S. Wheeler
Broker
8888 Dyer Street, Suite 510
El Paso, Texas 79904
(w/o enclosures)