



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 26, 1995

Mr. Jonathan Graham
City Attorney
City of Temple
Municipal Building
Temple, Texas 75601

OR95-296

Dear Mr. Graham:

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# 33005.

The City of Temple (the "city") received a request for various information and records associated with a proposed city smoking ordinance. You state that all of the records in the city's possession which relate to the request are being made available to the requestor with the exception of a confidential memorandum dated February 24, 1995, from the city attorney to the city council. You state that arguably this memorandum comes within the request for

[c]opies of any and all "citizen requests" to tighten the City of Temple[s] stance on tobacco use. This request would include, but would not be limited to, written correspondence of any kind, electronic mail, notes of conversations, internal City of Temple memorandums, phone message records, and minutes of meetings. This request would also include copies of the City Attorney's appointment books or similar recording devices, and all long distance phone records from the City of Temple Attorney's office. The items listed above are requested from December 20, 1994, to and including April 1, 1995.

You contend that portions of the memorandum contain opinions, advice, and recommendations that are excepted from disclosure under section 552.111 of the Government Code, commonly referred to as the agency memoranda exception. You have submitted for our review a marked copy of the memorandum showing the portions of the

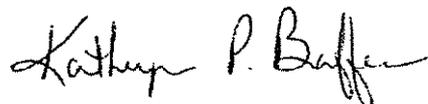
memorandum that you believe are excepted from disclosure. You state that you are furnishing an edited copy to the requestor deleting the marked portions. You state that the memorandum had accompanying attachments consisting of excerpts from statutes and ordinances, copies of newspaper articles, a copy of a paper presented at a municipal law seminar, and excerpts from the city's personnel and safety manuals which you have disclosed to the requestor.

Section 552.111 excepts from public disclosure an interagency or intra-agency memorandum or letter that would not be available by law to a party in litigation with the agency. The purpose of this section is to protect from 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.). The information excepted from disclosure under section 552.111 must be directly related to the policymaking functions of the governmental body. Open Records Decision No. 631 (1995) at 3. This information includes advice, recommendations, and opinions on matters involving the agency's policy mission. *Id.* On the other hand, an agency's policymaking functions do not encompass information that pertains solely to internal administrative or personnel matters. *Id.* Furthermore, section 552.111 does not except from disclosure purely factual information that is severable from the advice and opinion portions of internal memoranda. *Id.* Therefore, severable factual information may not be withheld under section 552.111.

You contend that the marked portions of the submitted document contain advice and opinions regarding the proposed smoking ordinance. You contend that this information directly relates to the city's policymaking procedures. In reviewing the submitted memorandum, some of the marked portions which you contend are excepted from disclosure consist of factual information. These portions must be disclosed to the requestor. Other marked portions consist of advice, opinion, and recommendations related directly to the policymaking issue of the city's proposed smoking ordinance. These portions are excepted from disclosure by section 552.111. We have marked the document accordingly.

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 any questions about this ruling, please contact our office.

Yours very truly,



Kathryn P. Baffes
Assistant Attorney General
Open Government Section

KPB/LRD/rho

Ref.: ID# 33005

Enclosure: Marked document

cc: Mr. Kevin J. Koch
McLane Company, Inc.
P.O. Box 6115
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(w/o enclosure)