



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 27, 1995

Mr. John Steiner
Division Chief
Department of Law
City of Austin
P.O. Box 1088
Austin, Texas 78767-1088

OR95-707

Dear Mr. Steiner:

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# 31270.

The City of Austin (the "city") received an open records request for documents related to a proposed city ordinance. The city contends that portions of several related memorandums from the city attorney's office to various members of city government are excepted from required disclosure by sections 552.107 and 552.111 of the Government Code. The city submits for our review eight memorandums prepared by the city attorney's office marked to reflect the portions it contends are protected from required disclosure.

Section 552.107 excepts information if "it is information that . . . 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." Section 552.107(1) protects information that reveals client confidences to an attorney, including facts and requests for legal advice, or that reveals the attorney's legal advice. *See* Open Records Decision No. 574 (1990). After reviewing the marked portions of the documents you submit for our review, we conclude that these portions consist of the city legal department's advice and opinion. Consequently, pursuant to section 552.107, they may be withheld from required disclosure.

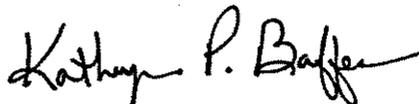
For the marked portions of the documents submitted which are not excepted from disclosure by section 552.107, you contend that because the memorandums are intraagency documents, your marked portions are protected by section 552.111 of the Government Code. Section 552.111 excepts interagency and intraagency memorandums 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). 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.) (emphasis added); *see also* Open Records Decision No. 632 (1995). In Open Records Decision No. 615 (1993) 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

After reviewing the marked portions of the documents you contend are excepted from disclosure by section 552.111, we conclude that these portions are related to the city's policymaking functions. These marked portions relate to the city's policy regarding the use and interpretation of its minority and women business enterprise affirmative action program. Since these marked portions consist of advice and opinion related to the city's policymaking decisions intended for use in the deliberative process, they may be withheld from required disclosure. The unmarked portions of the documents submitted for our review, however, must be released to the requestor.

We are resolving this matter with this 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 may 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,



Kathryn P. Baffes
Assistant Attorney General
Open Government Section

Ref: ID# 31270

Enclosures: Submitted documents

cc: Mr. David Chan
President
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(w/o enclosures)