



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 21, 1995

Ms. Joan Kennerly
Assistant City Attorney II
City of Irving
P.O. Box 152288
Irving, Texas 75015-2288

OR95-1574

Dear Ms. Kennerly:

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# 24072.

The City of Irving (the "city") received a request for information relating to alterations to the Texas Stadium. You seek to withhold some of the requested information because you say that since the information consists of the handwritten notes of the city attorney, they are outside of the scope of the Open Records Act, and because you assert that they are excepted from disclosure under sections 552.101 and 552.111 of the Government Code.

The city attorney's handwritten notes at issue consist of the following: 1.) notes taken during a meeting with city employees and a representative of a private party; 2.) notes taken during a phone call with an individual; and 3.) a note written to an assistant city attorney. Section 552.021(a) of the Government Code provides that information that is "collected, assembled, or maintained" by a governmental body "in connection with the transaction of official business" is public information. It is clear from a review of the notes that they were created and maintained by the city attorney in connection with his official duties and as such cannot be deemed to be outside the scope of the Open Records Act. See Open Records Decision No. 450 (1986) at 3-4.

You assert that the notes are excepted from required public disclosure under section 552.101 of the Government Code because they are attorney work product. However, discovery privileges are not covered by section 552.101. Open Records Decision No. 575 (1990) at 2. An attorney's work product may be withheld under section 552.103 of the Government Code, if the requirements for that exception are met. See *id.*

A governmental body may withhold information under section 552.103 if the information relates to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 551 (1990). In this instance you have not raised section 552.103. Nor have you shown that litigation is pending or reasonably anticipated. Consequently, you may not withhold the notes as attorney work product based on section 552.101 or section 552.103 of the Government Code.

You also raise section 552.111 of the Government Code, which excepts

[a]n interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency.

This exception applies to internal communications consisting of advice, recommendations, opinions, and other material reflecting the deliberative or policymaking processes of a governmental body. Open Records Decision No. 615 (1993). Section 552.111 does not except from disclosure factual information. *Id.*

The notes marked "B" are factual and are not interagency or intra-agency communications. Thus, you may not withhold the notes marked "B" under section 552.111. However, the notes marked "A" and "C" do contain some internal communications consisting of advice, recommendation and opinion, which you may withhold pursuant to section 552.111.¹ We have marked the document accordingly.

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 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Guajardo
Assistant Attorney General
Open Records Division

KHG/rho

¹We assume that the third party who attended the meeting where the notes marked "A" were taken attended the meeting in the capacity of a consultant to the city. See Gov't Code § 552.007

Ref. ID# 24072

Enclosures: Marked documents

cc: Mr. Robert H. Osburn
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(w/o enclosures)