



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 26, 1996

Mr. Joe H. Staley, Jr.
Law Offices of Locke, Purnell,
Rain & Harrell
2200 Ross Avenue, Suite 2200
Dallas, Texas 75201-6776

OR96-0087

Dear Mr. Staley:

On behalf of the Texas Turnpike Authority ("TTA"), you ask this office to reconsider our conclusion in Open Records Letter No. 94-463 (1994) with respect to certain documents. We have assigned your request for reconsideration ID# 30111.

The information addressed in Open Records Letter No. 94-463 (1994) relates to the awarding of a contract by the TTA to Cubic Toll Systems ("Cubic"). You have released most of the records pursuant to that ruling; however, you object to our application of sections 552.107 and 552.111 of the Government Code to some of the requested records.

We first address your claim that section 552.111 excepts from disclosure the document you have resubmitted as Exhibit A. In Open Records Letter No. 94-463 (1994), this office addressed your contention that various documents were excepted from required public disclosure under section 552.111. As we indicated in Open Records Letter No. 94-463 (1994), section 552.111 does not provide a blanket exception for all inter- or intraagency memoranda. Section 552.111 excepts from disclosure "only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the deliberative or policymaking processes of the governmental body." Open Records Decision No. 615 (1993) at 5. Purely factual material is not excepted. *Id.* at 6. Because section 552.111 does not ordinarily afford blanket protection, the governmental body asserting the exception must clearly mark or otherwise identify the information that it seeks to withhold in a manner that enables this office to evaluate the merits of its claim.

In your original request to this office you stated that “[a]s the engineering consultant to the TTA, Gulf is an agent of the TTA and any correspondence between Gulf and the TTA is internal memoranda. Correspondence containing the advice, opinions and recommendations of Gulf or the TTA in connection with the procurement of the VIVID contract would fall within this exception.” You did not, however, mark the documents to segregate the factual information from the advice, opinion and recommendation. The custodian of records has the burden of proving that records are excepted from public disclosure. Attorney General Opinion H-436 (1974). A general claim that section 552.111 applies to particular documents when it is clear that the exception does not apply to all of the information in the documents does not comport with the procedural requirements of the Open Records Act. Open Records Decision No. 419 (1984) at 3.

Some of the information for which you claimed protection under section 552.111 was purely factual in nature. As we stated in Open Records Letter No. 94-463 (1994), we marked the information that we were able to determine consisted of advice, recommendations, and opinions relating to TTA’s policymaking functions. We have reviewed the document for which you claim additional protection under section 552.111. We conclude that our original ruling regarding section 552.111 in Open Records Letter No. 94-463 (1994) is correct. You may therefore withhold under section 552.111 only the information we originally marked as being excepted under that section.

We next address your request that this office reconsider its ruling with respect to the application of section 552.107 to the documents resubmitted for our review. In your original request for a ruling to this office, you claimed that “[i]nformation that the TTA provided to its corporate counsel, Locke Purnell Rain Harrell, for the purpose of obtaining legal advice, or actual legal advice or legal opinions from Locke Purnell Rain Harrell to the TTA or to Gulf in its capacity as a consultant to the TTA pertaining to negotiations between Cubic and the TTA would be protected by the attorney/client privilege and would fall within [section 552.107].” In a letter dated January 20, 1994, in which you submitted additional documents for our review, you claimed that “a handwritten page of notes made by Frank Stevenson, an attorney for the TTA with the firm Locke Purnell Rain Harrell, during the course of discussions with representatives of the TTA” contained attorney/client communications. Finally, in a letter dated February 1, 1994, in which you submitted additional documents for our review, you objected to release of the following information:

- 1) confidential correspondence to or from high-level TTA employees . . . for the purpose of giving or receiving legal advice;
- 2) handwritten attorney notes of confidential meetings, conferences or telephone conversations with any of the above-identified individuals for the purpose of giving or receiving legal advice; and

3) confidential drafts of documents created by Locke Purnell or by the TTA and transmitted between attorney and client for the purpose of giving or receiving legal advice and handwritten comments/changes to such draft documents and language proposed by the client to be included in such draft documents.

We have reviewed the documents you have resubmitted that you claim are protected under section 552.107 and have reviewed your original arguments for withholding the records as described above. We conclude that you may withhold the resubmitted documents under section 552.107. You may therefore disregard the conclusion reached in Open Records Letter No. 94-463 (1994) with respect to these documents.

Finally, you claim that section 552.110 excepts from disclosure the documents resubmitted for our review as Exhibits C1 and C2. You may withhold these documents under the ruling reached in Open Records Letter No. 94-463 (1994).

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

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Records Division

LRD/GCK/rho

Ref.: ID# 30111

Enclosures: Marked and submitted documents

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