Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 31, 1996

Mr. Richard J. Ybarra
Assistant Attorney General
General Counsel Division
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

OR96-0127

Dear Mr. Ybarra:

On behalf of the Office of the Attorney General (the "OAG"), you have asked this office to reconsider Open Records Letter No. 95-1126 (1995). Your request for reconsideration was assigned ID# 37857.

The OAG received a request for seven categories of information related to the use of hazardous waste in cement production. The OAG released some of the information to the requestor and submitted the remaining information to this office for review. You sought to withhold the remaining information from disclosure under sections 552.101, 552.103, 552.106, 552.107, 552.108, and 552.111 of the Government Code.

In Open Records Letter No. 95-1126 (1995) we explained that section 552.111 excepts from disclosure internal communications of advice, recommendations and opinions that reflect the OAG's policymaking processes. Open Records Decision No. 615 (1993). Section 552.111 does not except purely factual information. *Id.* Similarly we noted that section 552.107(1) excepts information that reveals an attorney's legal advice or opinion, but not information that is purely factual. Open Records Decision No. 574 (1990). We ruled that some information contained in the documents you submitted is purely factual and therefore must be released. We marked the documents to show which portions you should release.

You have resubmitted several documents to this office. In your request for reconsideration you ask us to reexamine our application of section 552.111 to these documents. Specifically, you assert that the factual portions of these documents are "inextricably intertwined" to the opinion portions, and that therefore the factual portions

are not severable. You also object to our interpretation of section 552.107(1). You note that section 552.107(1) was amended by the Seventy-fourth Legislature. You state that "the new provision incorporates Texas law concerning privileged attorney-client communications and attorney work-product." You argue that this amended section excepts from disclosure some of the factual portions that we marked for release. [1]

We have considered your arguments, and we decline to modify our ruling in Open Records Letter No. 95-1126 (1995) for the following reasons. First, the factual portions that have been marked for release are severable from the opinion portions of the resubmitted documents. These facts, standing alone, do not reveal the policymaking processes of the OAG or call for the conclusions reached by the documents' authors. Secondly, the recent amendments to chapter 552 of the Government Code apply only to requests for information made on or after September 1, 1995. As the request for information in this case was made prior to the effective date of the amendment to section 552.107(1), we cannot apply either the amended section or any interpretation of the amended section to this request.

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

Yours very truly,

Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref.: ID# 37857

Enclosures: Submitted documents

cc: Mr. Albert R. Axe, Jr.
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(w/o enclosures)

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[1]Neither your original brief dated February 14, 1994, nor your supplemental brief dated April 21, 1994 raises the attorney work-product argument. We cannot consider new arguments for disclosure raised for the first time in a request for reconsideration; therefore we do not address the work-product issue here.