



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

February 12, 1996

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

OR96-0173

Dear Mr. Ybarra:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 35646.

The Office of the Attorney General (the "OAG") received a request for "any additional information related directly or indirectly" to a particular claim for crime victims' compensation. The requestor previously submitted a request for "all information related directly or indirectly" to the same claim. In response to that request, the OAG released the information it held at the time to the requestor. The OAG has generated additional information related to the claim, and it is this additional information that the requestor now seeks. You have submitted this information for our review, and you contend that it is excepted from disclosure by sections 552.103 and 552.111 of the Government Code.<sup>1</sup>

Section 552.103(a) excepts from disclosure information relating to litigation to which the OAG is or may be a party. The OAG has the burden of providing relevant facts and documents to show that section 552.103(a) is applicable in a particular situation. In order to meet this burden, the OAG must show that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston*

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<sup>1</sup>It appears that the OAG obtained some of the requested information from a law enforcement agency. You have not argued that section 552.108 excepts this information from disclosure, and sections 552.301 and 552.302 prevent you from now raising section 552.108. However, because the law enforcement agency presumably did not receive a copy or notice of this request, that agency did not have the opportunity to submit its own arguments for excepting this material from disclosure. Under these circumstances, the law enforcement agency may now be able to raise section 552.108 as a compelling reason for non-disclosure of this information. See Open Records Decision 586 (1991).

*Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. You have not met your burden under section 552.103; therefore, you cannot withhold the requested information pursuant to section 552.103.

Section 552.111 excepts "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. An agency's policymaking functions, however, do not encompass internal administrative or personnel matter; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. Open Records Decision No. 615 (1993) at 5-6. In addition, section 552.111 does not except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. *Id.* at 4-5.

We have examined the information submitted to us for review. We conclude that some of the submitted information constitutes advice, recommendations, and opinions reflecting the OAG's policymaking processes. Some of the submitted information, however, is purely factual and may not be withheld under section 552.111. We have marked the information that you may withhold under section 552.111 of the Government Code.

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

Yours very truly,



Karen E. Hattaway  
Assistant Attorney General  
Open Records Division

KEH/ch

Ref.: ID# 35646

Enclosures: Marked documents

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