



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 29, 1996

Mr. Alberto R. Gonzales
General Counsel
Office of the Governor
State of Texas
P.O. Box 12428
Austin, Texas 78711

OR96-0275

Dear Mr. Gonzales:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 38158.

The Governor's Office received a request for "any and all information in the possession of the Governor's Office regarding the extradition" of a certain individual. You have released some of the requested information to the requestor but claim that a portion of the requested information is excepted from required public disclosure under section 552.111 of the Government Code.

Section 552.111 excepts "[a]n 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 concluded that section 552.111 excepts from required public disclosure only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. In addition, section 552.111 does not except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. *Id.*

We have examined the documents which you seek to withhold. With regard to the handwritten memorandum, we agree that the portion you seek to withhold consists of advice, recommendations, opinions, and other material reflecting the policymaking processes of the Governor's Office and, as such, may be withheld from required public disclosure under section 552.111. With regard to the typed draft memorandum, you assert that it may be withheld from required public disclosure in its entirety under section 552.111 because it is a draft. We disagree. While it is true that a draft of a document *that*

has been released or is intended for release in final form may qualify for exception under section 552.111, because the draft necessarily represents the advice, opinion, and recommendation of the drafter as to the form and content of the final document, *see* Open Records Decision No. 559 (1990) at 2, you do not indicate that this internal memorandum has ever been released or intended for release. Moreover, as with any document to which the section 552.111 exception is claimed, purely factual matters, where severable from the draft, must be released. *Id.* Nevertheless, a portion of this memorandum does contain advice, recommendations, and opinions reflecting the policymaking processes of the Governor's office and, therefore, may be withheld from required public disclosure. We have marked the document to show which portion may be withheld. The remainder must be released to the requestor.

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 under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink that reads "Todd Reese". The signature is written in a cursive style and is followed by a long horizontal line.

Todd Reese
Assistant Attorney General
Open Records Division

RTR/

Ref: ID# 38158

Enclosures: Marked documents

cc: Mr. Bryan L. Walter
Attorney at Law
1009 Henderson Street
Fort Worth, Texas 76102
(w/o enclosures)