



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 3, 1996

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

OR96-1067

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# 40233.

The Office of the Attorney General (the "OAG") received a request for the following information:

Any memorandums, orders, instructions, etc., given to any State of Texas agencies, which give instructions or advice on how to deal with matters which question State and/or Federal law, policies or regulations, arising from challenges from Citizens of the Republic of Texas includ[ing] any document(s) which confirms or denies the legal standing of the Republic of Texas....

You indicate that you have provided the requestor with access to a certain document but maintain that the contents of the working file of Attorney General Opinion DM-389 (1996), is excepted from required public disclosure under sections 552.107 and 552.111 of the Government Code. We have considered the exceptions you claimed and have reviewed the documents at issue.

Section 552.107(1) excepts information from disclosure if:

[I]t is information that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Texas Rules of Civil Evidence, the Texas Rules of Criminal Evidence, or the Texas Disciplinary Rules of Professional Conduct.

In Open Records Decision No. 574 (1990), this office concluded that section 552.107 excepts from public disclosure only "privileged information," that is, information that reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinions. Open Records Decision No. 574 (1990) at 5. However, section 552.107(1) does not protect purely factual information unless the factual information constitutes a confidence that the client related to the attorney. *See id.* at 5. As section 552.111 generally protects only advice, opinion, and recommendations, any protection under section 552.111 will usually be no greater or less than the protection offered under section 552.107. *See* Open Records Decision No. 574 (1990) at 2.

Section 552.111 of the Government Code excepts from required public disclosure:

An 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 a governmental body's internal communications consisting of advice, recommendations, or opinions reflecting the policymaking process of the governmental body at issue. *See* Open Records Decision Nos. 631 (1995) at 3, 615 (1993) at 5. Section 552.111 does not except from disclosure purely factual information that is severable from the opinion portions of the communication. However, the preliminary drafts of a policymaking document that has been released or is intended for release in a final form is excepted from disclosure in its entirety under section 552.111 because such a draft necessarily represents the advice, recommendations, or opinions of the drafter as to the form and content of the final document. Open Records Decision No. 559 (1990) at 2.

You contend that two draft documents, electronic mail memoranda ("e-mail") and the identity and content of judicial decisions in the file come under the protection of section 552.111 of the Government Code. In Open Records Decision No. 559 (1990), this office held that a preliminary draft of a document that is intended for release in a final form necessarily represents the advice, opinion, and recommendation of the drafter as to the form and content of the final document and, as such, may be withheld pursuant to the predecessor of section 552.111. *See also* Open Records Decision No. 615 (1993) (information must be intended for use in the policymaking process). We have reviewed the draft documents and judicial decisions at issue and conclude that they relate to the policymaking processes of the OAG. Consequently, assuming that the OAG will make available to the requestor the final published version of Attorney General Opinion DM-389 (1996), we conclude that you may withhold the drafts, e-mails and the identity and content of judicial decisions in the file at this time pursuant to section 552.111.¹

¹Having concluded that section 552.111 of the Government Code applies to the requested information, we need not consider your section 552.107 claim.

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,

A handwritten signature in black ink that reads "Sam Haddad". The signature is written in a cursive style with a large, looping initial "S".

Sam Haddad
Assistant Attorney General
Open Records Division

SH/cbh

Ref: ID# 40233

Enclosures: Submitted documents

cc: Mr. William Otto Carter, III
Route 2, Box 676C
Abilene, Texas 79601
(w/o enclosures)