



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 15, 1997

Mr. Kevin McCalla
Director, Legal Division
Texas Natural Resource
Conservation Commission
P.O. Box 13087
Austin, Texas 78711-3087

OR97-0826

Dear Mr. McCalla:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 105519.

The Texas Natural Resource Conservation Commission (the "commission") received a request for a copy of the draft document regarding the water wells on Blue Basin Farm in Wharton County. You inform us that you have released most of the pages from the draft to the requestor, but you claim that some of the pages are excepted from disclosure under sections 552.107 and 552.111 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

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 matters; 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.

¹Because you have not indicated how section 552.107 applies to except the requested information from disclosure, we will not consider your section 552.107 claim. See Gov't Code § 552.301(b).

Generally, 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. Yet, where a document is a genuine preliminary draft that has been released or is intended for release in final form, factual information in that draft which also appears in a released or releasable final version is excepted from disclosure by section 552.111. Open Records Decision No. 559 (1990). However, severable factual information appearing in the draft but not in the final version is not excepted by section 552.111. *Id.*

Although our review of the pages you seek to withhold shows that some of the information contained in these pages is purely factual, section 552.111 excepts these marked portions from required public disclosure provided such factual information is contained in the released final version.

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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/rho

Ref.: ID# 105519

Enclosures: Marked documents

cc: Mrs. Elizabeth B. Thomas
3712 South Peach Street
Salt Lake City, Utah 84109
(w/o enclosures)