



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 29, 1997

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

OR97-0988

Dear Mr. McCalla:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 105419.

The Texas Natural Resource Conservation Commission (the "commission") received a request for information pertaining to a Petition to Revoke a Permit for the BFI-Sinton Landfill filed in 1995. You inform us the commission has released certain information to the requestor, but seeks to withhold the remainder of the requested information pursuant to sections 552.107 and 552.111 of the Government Code. We have considered your arguments and have reviewed the information submitted.

Section 552.107(1) of the Government Code protects 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." *See* Open Records Decision No. 574 (1990). In instances where an attorney represents a governmental entity, the attorney-client privilege protects only an attorney's legal advice and confidential attorney-client communications. *Id.* Upon review of the documents submitted, we conclude that a portion of the information may be withheld under section 552.107(1). However, some of the information appears to consist of notes which do not contain client confidences or an attorney's legal advice or opinion. Such information is not protected under section 552.107(1). *See id.* at 7 (section 552.107 protects legal advice and opinion but not purely factual information merely because it is reported by an attorney). For your convenience, we have marked with red tags the information that may be withheld.

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 routine 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. 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. Upon review of the information you have marked as excepted under section 552.111, we conclude that such information, to the extent not excepted under section 552.107(1), is similarly not excepted under section 552.111, as it is factual in nature.

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,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/ch

Ref.: ID# 105419

Enclosures: Marked documents

cc: Mr. Tom Bilek
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(w/o enclosures)