



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

September 24, 1997

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

OR97-2160

Dear Mr. McCalla:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 109872.

The Texas Natural Resource Conservation Commission received a request for "copies of your files relating to" the Browning Ferris Industries Landfill in Sinton, Texas. You have submitted to this office certain information that you assert is excepted from required public disclosure based on sections 552.107(1) and 552.111 of the Government Code.

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 No. 615 (1993). This exception does not except from disclosure purely factual information that is severable from the opinion portions of the communication. *See id.* The exception also protects preliminary drafts of a document that pertain to policy matters and any comments or other notations on the drafts because they necessarily represent 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). We agree that this exception covers the information you submitted to this office as Exhibit A.

Section 552.107(1) of the Government Code states that information is excepted from required public disclosure if

it 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.

Although section 552.107(1) appears to except information within rule 1.05 of the Texas State Bar Disciplinary Rules of Professional Conduct, the rule cannot be applied as broadly as written to information that is requested under the Open Records Act. Open Records Decision No. 574 (1990) at 5. To prevent governmental bodies from circumventing the Open Records Act by transferring information to their attorneys, section 552.107(1) is limited to material within the attorney-client privilege for confidential communications; "unprivileged information" as defined by rule 1.05 is not excepted under section 552.107(1). Open Records Decision Nos. 574 (1990) at 5, 462 (1987) at 13-14. Thus, section 552.107(1) applies only to information that reveals attorney advice and opinion or client confidences. *See* Open Records Decision No. 574 (1990). We agree that section 552.107(1) applies to portions of Exhibit B and have marked the documents accordingly.

We are resolving this matter with this 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 may 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,



Kay Hastings  
Assistant Attorney General  
Open Records Division

KH/rho

Ref.: ID# 109872

Enclosures: Marked documents

cc: Ms. Cathlynn Cannon  
Fanning, Harper & Martinson  
Third Floor Preston Commons West  
8117 Preston Road  
Dallas, Texas 75225  
(w/o enclosures)