



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 9, 1997

Ms. Susan M. Cory
General Counsel
Texas Workers' Compensation Commission
Southfield Building, MS-4D
4000 South IH-35
Austin, Texas 78704-7491

OR97-2257

Dear Ms. Cory:

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# 109638.

The Texas Workers' Compensation Commission (the "commission") received an open records request from a former commission employee for all records contained in her personnel file and "termination file." You inform us that the requestor subsequently amended her open records request to encompass only the termination file. You contend that certain documents contained in the file that you have marked are excepted from required public disclosure pursuant to sections 552.107 and 552.111 of the Government Code.¹

Section 552.111 of the Government Code excepts interagency and intra-agency memoranda and letters, but only to the extent that they contain advice, opinion, or recommendation intended for use in the entity's policymaking process. Open Records Decision No. 615 (1993) at 5. The purpose of this section is "to protect from public disclosure advice and opinions *on policy matters* and to encourage frank and open discussion within the agency in connection with its decision-making processes." *Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.--San Antonio 1982, writ ref'd n.r.e.) (emphasis added). In Open Records Decision No. 615 (1993) at 5, this office held that

to come within the [section 552.111] exception, information must be related to the *policymaking* functions of the governmental body. An

¹We note that among the documents submitted to this office are records that you have not marked as being excepted from required public disclosure. We assume the commission has made these records available to the requestor. If it has not, it must do so at this time. See Gov't Code §§ 552.301-302.

agency's policymaking functions do not encompass routine internal administrative and personnel matters . . . [Emphasis in original.]

Although you contend that the information at issue pertains to "personnel matters of broad scope that affect the Commission policy mission," you have not explained, nor is it apparent from the face of the documents, why such is the case. We therefore conclude that you have not met your burden in establishing the applicability of section 552.111 to any of the documents at issue. The commission may not withhold any of the requested records pursuant to section 552.111.

Section 552.107(1) of the Government Code excepts from required public disclosure 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 instances where an attorney represents a governmental entity, the attorney-client privilege protects only an attorney's legal advice and confidential attorney-client communications. *See* Open Records Decision No. 574 (1990). We agree that the commission may withhold the documents you have marked, or portions thereof, as coming within the protection of section 552.107(1). We have indicated on the documents the information that the commission may withhold pursuant to the attorney-client privilege. All remaining information 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 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/RWP/ch

Ref.: ID# 109638

Enclosures: Submitted documents

cc: Ms. Janet Wright
1305 Rail Fence Cove
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(w/o enclosures)

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