



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 17, 1997

Mr. J. Robert Giddings
The University of Texas System
Office of General Counsel
201 West Seventh Street
Austin, Texas 78701-2981

OR97-2768

Dear Mr. Giddings:

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# 111957.

The Board of Regents of the University of Texas System (the "university") received a request for "all information relative to and files concerning any legislation since 1986 contemplated (i.e. U.T.'s 'wish list'), drafted, filed or enacted amending" the Texas Constitution and several other statutes. You inform us that the university will release to the requestor a "copy of the final reports containing primarily factual information regarding the highlights of each of the past five legislative sessions." You state that, by copy of your letter to this office, you request that the requestor amend and narrow his request. *See* Gov't Code § 552.222(b) ("If a large amount of information has been requested, the governmental body may discuss with the requestor how the scope of a request might be narrowed."); *see also* Open Records Decision No. 563 (1990) at 7. We have no information that the requestor has done so. You seek to withhold certain information from public disclosure based on sections 552.101, 552.106, 552.107 and 552.111 of the Government Code. You have submitted representative samples of "seven categories of documents compiled by the U.T. System Office of Governmental Relations that constitute draft legislation and working papers prepared in connection with draft legislation."¹ You also argue that, to the extent the request can be construed to encompass legislation passed over the last decade, the act does not require the university to perform legal research. *See id.* § 552.227.

¹In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). This open records letter does not reach, and therefore does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Section 552.106(a) states as follows:

A draft or working paper involved in the preparation of proposed legislation is excepted from [required public disclosure].

This provision protects information concerning the deliberative process of a governmental body pertaining to the enactment of legislation. However, section 552.106(a) does not protect purely factual material that can be disclosed without revealing opinions or recommendations. *See* Open Records Decision No. 460 (1987). Nonetheless, a comparison or analysis of facts prepared to support proposed legislation is within section 552.106. *See id.* 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 No. 615 (1993). Like section 552.106, 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 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).

Section 552.107(1) 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) protects only information that reveals attorney advice and opinion or client confidences. *See* Open Records Decision No. 574 (1990).

We agree that these exceptions apply to portions of the submitted information. We have marked the documents accordingly.

Finally, in regard to the scope of the request, we are unable to determine whether the requestor seeks copies of statutes enacted in the past ten years, although, based on the request, it seems unlikely to us. If the requestor in fact seeks copies of laws, we agree that the act does not require the university to perform legal research for the requestor. *See Gov't Code § 552.227; Open Records Decision No. 563 (1990).*

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

KHH/rho

Ref.: ID# 111957

Enclosures: Marked documents

cc: Mr. Stephen N. Losson
Publisher/Editor
Initiate!!
P.O. Box 2013
Austin, Texas 78766-2013
(w/o enclosures)