



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 22, 1997

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

OR97-2817

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# 112681.

The Texas Workers' Compensation Commission (the "commission") received a request for the following:

- 1) Any and all open records request, public information requests, or other inquir[i]es that prompted the . . . Commission to seek the Attorney General Opinion which resulted in the informal letter ruling OR97-0943.
- 2) Any and all requests for an Open Records Opinion made by the . . . Commission which resulted in the informal letter ruling OR97-0943.
- 3) Any and all briefs, responses, replies or document filed by any person or entity in response to the . . . Commission's request for an Open Records Opinion which resulted in the informal letter ruling OR97-0943.

You assert that the requested information is excepted from disclosure pursuant to sections 552.107 and 552.111 of the Government Code. We have considered your arguments and have reviewed the information submitted.

Pursuant to section 552.301(b)(1), a governmental body is required to submit to this office general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld. You have not explained how the claimed exceptions apply to the open records request submitted as responsive to item 1. Thus, you must release the open records request.

We now address your assertion that sections 552.107 and 552.111 except from public disclosure the commission's brief and request for a ruling from this office. First, we note that this office generally regards a governmental body's letter requesting an open records decision, including any arguments for withholding information under the act, as a public record. Open Records Decision No. 459 (1987). Two exceptions to our policy of disclosing request letters are when a request letter contains the information that is in dispute and information that is protected by privacy rights. *Id.* We conclude that release of the requested information does not implicate the privacy rights of the third parties.

Section 552.107(1) excepts information that an attorney cannot disclose because of a duty to his client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107 excepts from public disclosure only "privileged information," that is, information that reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinions; it does not apply to all client information held by a governmental body's attorney. *Id.* at 5. Section 552.107 excepts from public disclosure certain communications between a governmental body and its legal counsel. The record at issue is not a communication excepted by section 552.107 as there is no attorney-client relationship between the commission and the Attorney General's Office in this instance. Therefore, you may not withhold the requested document under section 552.107.

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. When determining if an interagency memorandum is excepted from disclosure under section 552.111, we must consider whether the agencies between which the memorandum is passed share a privity of interest or common deliberative process with regard to the policy matter at issue. *See* Open Records Decision No. 561 (1990) at 9.

Upon review of the information you seek to withhold under section 552.111, we conclude that with regard to the document at issue, the commission and this office do not share a privity of interest or common deliberative process with regard to the policy matter at issue. We therefore conclude that you may not withhold the requested information under section 552.111.

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,



Yen-Ha Le
Assistant Attorney General
Open Records Division

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Ref.: ID# 112681

Enclosures: Submitted documents

cc: Mr. Robert R. Graves, Jr.
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(w/o enclosures)