



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 2, 1998

Ms. Yolanda Giner
Assistant City Attorney
The City of El Paso
2 Civic Center Plaza
El Paso, Texas 79901-1196

OR98-0319

Dear Ms. Giner:

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# 112213.

The City of El Paso (the "city") received a request for three categories of documents concerning an airport terminal renovation. You indicate that you are releasing some of the requested information. You claim, however, that the remaining requested information is excepted from disclosure under section 552.111 of the Government Code.¹ You have submitted a representative sample of the requested information for our review.²

Section 552.111 excepts from 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 not only to a governmental body's internal memoranda, but also to memoranda prepared for a governmental body by its outside consultant. Open Records Decision Nos. 462 (1987) at 14, 298 (1981) at 2. In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light

¹We note that in your initial brief you also raised section 552.103 of the Government Code, which you have now withdrawn. Accordingly, you no longer seek to protect from disclosure and are releasing to the requestor the correspondence submitted for our review in Exhibits B-1 and C-1 and the claim documents in Exhibit B-2. As you do not mention Exhibits E, F, and G, we assume that the city is releasing these documents to the requestor.

²In 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). 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.

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. Section 552.111 does not generally except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. Open Records Decision No. 615 (1993) at 4-5. Upon review of the documents, we agree that some of the information submitted is protected from disclosure under section 552.111. We have marked the information which you may withhold from disclosure. The 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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Vickie Prehoditch
Assistant Attorney General
Open Records Division

VDP/alg

Ref: ID# 112213

Enclosures: Marked documents

cc: Mr. Patrick C. McDonnell
City Hall Reporter
El Paso Times
P.O. Box 20
El Paso, Texas 79999
(w/o enclosures)