



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

April 14, 1998

Ms. Kristen Klein  
County Auditor  
Guadalupe County  
307 West Court, Suite 205  
Seguin, Texas 78155

OR98-0952

Dear Ms. Klein:

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# 114975.

The Guadalupe County Auditor's Office (the "county auditor") received an open records request for any audit report prepared by an outside auditor regarding any Guadalupe County department that the county auditor "received during the past 30 days." You state that the only responsive document held by the county auditor is the "discussion draft" of a management letter that will become part of the "Comprehensive Annual Financial Report" that will be presented to the commissioner's court at a future date. Because the only responsive information held by the county auditor is currently in draft form, you seek to withhold this record pursuant to section 552.111 of the Government Code.

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. In Open Records Decision No. 429 (1985), this office indicated that information protected by section 552.111 must be prepared by a person or entity with an official reason or duty to provide the information in question. *See also* Open Records Decision Nos. 283 (1981), 273 (1981). This helps assure that the information plays a role in the deliberative process. Open Records Decision No. 464 (1987). *See Wu v. National Endowment of the Humanities*, 460 F.2d 1030 (5th Cir.), *cert. denied*, 410 U.S. 926 (1972). Consequently, the fact that the requested information was prepared by an outside consultant does not exempt the information from the protection of section 552.111.

In Open Records Decision No. 559 (1990), this office held that a preliminary draft of a document that is intended for release in a final form necessarily represents the advice, opinion, and recommendation of the drafter as to the form and content of the final document and as such may be withheld pursuant to the predecessor of section 552.111. Based on your representation that the management report to be presented to the commissioner's court will be made available to the public once the report is in final form, we conclude that the county auditor may withhold the draft at this time pursuant to 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

YHL/RWP/rho

Ref.: ID# 114975

Enclosures: Submitted documents

cc: Mr. Bob Supe  
The Seguin Gazette-Enterprise  
P.O. Box 1200  
Seguin, Texas 78155  
(w/o enclosures)