



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 30, 1998

Mr. Herbert L. Prouty
City Attorney
City of Denton
215 East McKinney
Denton, Texas 76201

OR98-1109

Dear Mr. Prouty:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 114536.

The City of Denton (the "city") received a request for all correspondence exchanged between the city and Denton County Historical Museum, Inc. from September 1997 to January 29, 1998, and memoranda relating to the city's concluded audit of the museum for the same time period. You claim that the requested information is excepted from disclosure under sections 552.103, 552.107 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the information submitted.

First, you assert that section 552.103 excepts from public disclosure information submitted as Exhibit 2. We note that you did not assert an exception under section 552.103 in your original brief. Section 552.301 of the Government Code requires a governmental body to state the exceptions that apply to withhold the information within ten business days after receipt of the written request for information. Gov't Code § 552.301. In Open Records Decision No. 638 (1996) at 3, this office stated that because it is "the governmental body's duty to establish the applicability of the exceptions it claims, we believe the act requires a governmental body raising section 552.103(a) to provide this office with information about new and significant developments concerning the anticipated litigation." "[A] governmental body must provide to this office these updates concerning the litigation in a *timely* manner." *Id.* (Emphasis added.) Furthermore, we stated that "if a suit is filed against a governmental body asserting section 552.103(a) on the basis of reasonably anticipated litigation while a request for an open records decision is pending in this office, the governmental body must inform this office of that suit *as soon as possible.*" *Id.* at 4. (Emphasis added.)

In your supplemental brief, dated March 23, 1998, in which you raise section 552.103 for the first time, you explain that "[o]n February 17, 1998, the City of Denton was served with a First Amended Original Petition, bringing the City of Denton, Texas . . . into a lawsuit against the Denton County Historical Museum, Inc." Although the city received the petition on February 17, 1998, you did not inform this office of the suit and your section 552.103 claim until March 23, 1998, more than a month after receipt of the petition. Thus, we conclude that you have failed to update this office in a timely manner, thereby waiving your section 552.103 claim. Open Records Decision No. 638 (1996) at 3.

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. When communications from attorney to client do not reveal the client's communications to the attorney, section 552.107 protects them only to the extent that such communications reveal the attorney's legal opinion or advice. *Id.* at 3. In addition, basically factual communications from attorney to client, or between attorneys representing the client, are not protected. *Id.* We conclude that most of the requested information may be withheld under section 552.107. We have marked the information that you may withhold under section 552.107.

We note that the information that must be released is not excepted by section 552.111 as it is factual information. 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. Section 552.111 does not 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.

Lastly, you inform us that one document, an excerpt from the November 14, 1997 status report, was also the subject of another request for a ruling from this office. This office ruled on the disclosure of this report in Open Records Letter No. 98-0786 (1998). In the previous request, you marked certain portions of the document as responsive to the request for information. For such responsive information, you asserted that only certain parts of the information were excepted by sections 552.107 and 552.111. Therefore, the information for which you did not assert an exception to disclosure was required to be released. *See* Gov't Code § 552.301. Because such information had to be released in Open Records Letter

No. 98-0786 (1998), that same information must also be released in the instant case. *See* Gov't Code § 552.007 (when a governmental body voluntarily makes part or all of its information available to the public, that information must be made available to any person); Open Records Decision No. 435 (1986).

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,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/rho

Ref.: ID# 114536

Enclosures: Marked documents

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