



## Office of the Attorney General

State of Texas

September 17, 1998

DAN MORALES  
ATTORNEY GENERAL

Ms. E. Cary Grace  
Assistant City Attorney  
City of Houston  
P.O. Box 1562  
Houston, Texas 77251-1562

OR98-2228

Dear Ms. Grace:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 118105.

The City of Houston (the "city") received a request for "a copy of the latest rate case (all documents) prepared by/for the City of Houston Water Department and presented to the Houston City Council." You contend that portions of the responsive document, a waste and wastewater rate study (the "study") prepared by Coopers & Lybrand, are excepted from disclosure under sections 552.110 and 552.111 of the Government Code. We have considered the exceptions you claim and have reviewed the document at issue.

Since you indicate that the proprietary interests of Coopers & Lybrand may be implicated by the release of the study, this office notified Coopers & Lybrand about the request for the study. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Open Records Act in certain circumstances).

Coopers & Lybrand did not respond to our notice, and you have not made any arguments under section 552.110 on behalf of Coopers & Lybrand. Therefore, we have no basis to conclude that any information in the study is excepted from disclosure under section 552.110.<sup>1</sup> *See* Open Records Decision Nos. 639 at 4 (1996) (to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary

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<sup>1</sup>Section 552.110 excepts from required public disclosure "[a] trade secret or commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision." Gov't Code § 552.110.

material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990).

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.” Gov’t Code § 552.111. This exception applies not only to internal memoranda, but also to memoranda prepared by consultants of a governmental body. Open Records Decision Nos. 462 at 14 (1987), 298 at 2 (1981). 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, however, except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. Open Records Decision No. 615 at 4-5 (1993).

You state that the study provided the city with “advice, opinion and recommendations on a matter of significant public policy – analysis of the City’s rate making methods used to establish water and wastewater rates and the efficacy of those rates.” We agree that the study reflects the city’s policymaking processes. Therefore, the city may withhold the advice, opinion, and recommendation portions of the study from disclosure under section 552.111. We have indicated with markings [orange brackets] which portions of the study are not protected by section 552.111 and must be released.

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,



Karen E. Hattaway  
Assistant Attorney General  
Open Records Division

KEH/mjc

Ref: ID# 118105

Enclosures: Marked documents

cc: Ms. Deidra N. Walton  
McKinsey & Company  
20 Houston Center, Ste. 3500  
Houston, Texas 77010  
(w/o enclosures)