



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 8, 1998

Mr. Kevin McCalla
Texas Natural Resource Conservation Commission
P.O. Box 13087
Austin, Texas 78711-3087

OR98-2390

Dear Mr. McCalla:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 118570.

The Texas Natural Resource Conservation Commission ("TNRCC") received a request to make available for inspection documents relating to the promulgation of proposed "Risk Reduction Rules." You indicate that you will make some of those records available and assert that the remaining responsive documents may be withheld from inspection pursuant to Texas Government Code sections 552.107 and 552.111. You have provided representative samples¹ of the information you seek to withhold. We have considered the exceptions you claim and have reviewed the documents submitted.

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." This section of the Government Code excepts only those internal communications consisting of advice, recommendations, opinions, and materials reflecting the policymaking processes of the governmental body; it does not except from disclosure internal administrative or personnel matters or purely factual information that is severable from the opinion portions of internal memoranda. Open Records Decision No. 615 (1993). Drafts of documents that are intended

¹In 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.

for release in final form may be withheld pursuant to this section. Open Records Decision No. 559 (1990).

You have also raised Government Code section 552.107 as an exception to disclosure to portions of the submitted documents. While generally section 552.111 protection is broader than, and subsumes section 552.107 protections where both are applicable, as you have couched your arguments in relation to specific submitted documents, we will address your section 552.107 argument separately. Section 552.107(1) excepts information from disclosure if it is information that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Texas Rules of Civil Evidence, the Texas Rules of Criminal Evidence, or the Texas Disciplinary Rules of Professional Conduct. It does not apply to all client information held by a governmental body's attorney; rather, it excepts from public disclosure only "privileged information," *i.e.* communications made to the attorney in confidence and in furtherance of rendering professional services. Legal advice or opinions and client confidences are excepted from disclosure by this section.

We have marked the representative sample of documents in accordance with the above analysis. However, we note several references in the submitted materials to discussions of proposed rules with outside, *i.e.* non TNRCC, individuals and groups, and to released versions of the proposed rules. If information protected as interagency memoranda has been released to one member of the public, it must be released to any other. Open Records Decision No. 464 (1987) (noting that release to a governmental agency authorized to have the information does not constitute release to the public) Therefore, any materials that have been released to entities or individuals other than governmental agencies authorized to have the information, must be made available for inspection to the current requestor, irrespective of its exception under Government Code sections 552.107 or 552.111.

We are resolving this matter with this 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 may 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,



Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/ch

Ref: ID# 118570

Enclosures: Marked documents

cc: Richard Loweree
Henry, Lowerre, Johnson, Hess & Fredrick
202 West 17th Street
Austin, Texas 78701
(w/o enclosures)