



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 9, 1998

Ms. Donna García Davidson
Assistant General Counsel
Office of the Governor of Texas
P. O. Box 12428
Austin, Texas 78711

OR98-2648

Dear Ms. Davidson:

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# 119235.

The Office of the Governor (the "governor") received an open records request for, among other things, the following records:

All documents, letters, office memoranda, and other written correspondence between the Governor's office, the office of State Federal Relations, George Bush's campaign office, any member of Congress, and or any other elected official pertaining to The Texas Compact, the amendments to the compact, and/or the conference committee on the compact.

You state that the governor asked the requestor to clarify her request on July 23, 1998 and received a verbal clarification of this request on July 31, 1998.¹ You state that some responsive information will be released to the requestor. You seek to withhold, however, three memoranda the governor received from the Office of State-Federal Relations pursuant to section 552.111 of the Government Code.²

¹We deem your request for an open records decision as being timely. See Open Records Decision No. 333 (1982).

²Although you also contend that section 552.106 of the Government Code protects this information, because this exception does not protect any information that is not otherwise protected by section 552.111, we need not address the applicability of section 552.106 at this time.

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 at 5 (1993). The purpose of this section is "to protect from public disclosure advice and opinions on policy matters and to encourage frank and open discussion within the agency in connection with its decision-making processes." *Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.--San Antonio 1982, writ ref'd n.r.e.). In Open Records Decision No. 615, this office held that "to come within the [section 552.111] exception, information must be related to the *policymaking* functions of the governmental body." ORD 615 at 5 (emphasis in original).

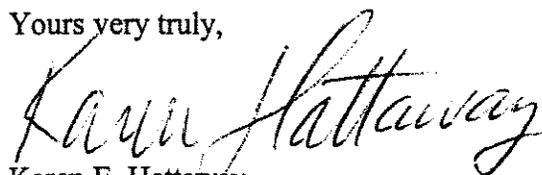
In Open Records Decision No. 429 (1985), this office indicated that information protected by section 552.111 must be prepared by a person or entity with an official reason or duty to provide the information in question. *See also* Open Records Decision Nos. 283 (1981), 273 (1981). This helps assure that the information plays a role in the deliberative process; if it does not, it is not entitled to protection under section 552.111. 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). The ultimate test to which these factors are directed is whether the advice, opinion, or recommendation was designed or intended to play a role in the decision-making process. *See* Open Records Decision No. 464 (1987).

Section 552.111 does not protect facts and written observation of facts and events that are severable from advice, opinions, and recommendation. ORD 615 at 5. If, however, the factual information is so inextricably intertwined with material involving advice, opinion, or recommendation as to make separation of the factual data impractical, that information may be withheld. Open Records Decision No. 313 (1982).

We agree that the information you have marked in the memoranda dated February 18, 1998 and March 13, 1998 consists of advice, opinion, or recommendation that the governor may withhold pursuant to section 552.111. We also agree that the entire text of the memorandum dated May 21, 1998 may also be withheld pursuant to section 552.111; the attachments to that memorandum, however, 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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/RWP/mjc

Ref.: ID# 119235

Enclosures: Submitted documents

cc: Ms. Erin Rogers
517 Navasota
Austin, Texas 78702
(w/o enclosures)