



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 9, 1998

Ms. Margaret Hoffman
Director Environmental Law Division
TNRCC
P.O. Box 13087
Austin, Texas 78701

OR98-2651

Dear Ms. Hoffman:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID # 119335.

The Texas Natural Resources Conservation Commission (the commission) received a request for all information concerning Texas Farm, Inc.'s truck washing facility. You indicate that some of the requested information will be released to the requestor. You argue that other responsive information is excepted by sections 552.107 and 552.111 of the Government Code. You have submitted a sample of the documents you seek to withhold, Exhibits C and D.1 through D.4.¹

You claim that portions of Exhibits C and D.1 are excepted from disclosure by sections 552.107 and 552.111. 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

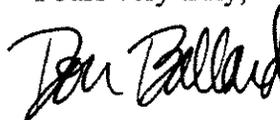
¹In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988); 497 (1988). This open records letter does not reach, and therefore does not authorize 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.

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 find that most of the information you have marked may be withheld. Some of the information, however, does not reveal confidential client communications or an attorney's legal advice or opinions. Because we make a determination under section 552.107 for Exhibits C and D.1, we do not address your additional argument under section 552.111. We do not believe that section 552.111 provides any greater protection than that already given under section 552.107. We have marked the information in Exhibits C and D.1 that may be withheld under section 552.107.

You also assert that the information within Exhibits D.2, D.3, and D.4 may be withheld under section 552.111. 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. An agency's policymaking functions, however, do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. Open Records Decision No. 615 at 5-6 (1993). In addition, section 552.111 does not except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. *Id.* at 4-5. While some of the documents in Exhibits D.2 and D.4 pertain to the policy functions of the commission, some of the information contained in these documents is purely factual. The documents in D.4 may be withheld under section 552.111. Open Records Decision 559 (1990) (preliminary drafts intended for public release in a final form necessarily represents the advice, opinion, and recommendation and may be withheld). We have marked the portions of the documents in Exhibits D.2 and D.3 that may be withheld from required public disclosure under section 552.111. The remaining information 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,



Don Ballard
Assistant Attorney General
Open Records Division

JDB\nc

Ref: ID# 119335

Enclosures: Marked documents

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(w/o enclosures)