

January 22, 1999



OFFICE OF THE  
ATTORNEY GENERAL  
STATE OF TEXAS

OR99-0196

Mr. Gregory T. Simpson  
Texas General Land Office  
Stephen F. Austin Building  
1700 North Congress Avenue  
Austin, Texas 78701-1495

— \* —  
JOHN CORNYN  
Attorney General

Dear Mr. Simpson:

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# 121446.

— \* —  
P.O. Box 12548  
Austin, Texas  
78711-2548

The General Land Office (the "office") received a request for documents concerning the office's response to the aftermath of Tropical Storm Josephine. Although you state that the majority of the responsive documents will be released to the requestor, you claim that the submitted documents are 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 submitted documents.

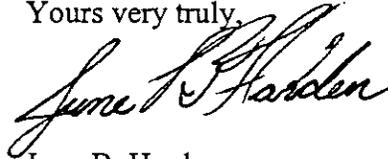
(512) 463-2100  
www.oag.state.tx.us

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 agree that some of the submitted documents contain attorney advice or opinion. Therefore, the office may withhold the information we have marked in Tab I under section 552.107(1) of the Government Code.

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. Furthermore, in Open Records Decision No. 559 (1990), this office concluded that a preliminary draft of a document that is intended for public release in final form necessarily represents the advice, opinion, and recommendation of the drafter as to the form and content of the final document and as such could be withheld pursuant to the statutory predecessor to section 552.111. Thus, section 552.111 also excepts draft documents to the extent that the draft documents pertain to the policymaking function of the governmental body. After careful review, we agree that the documents submitted under Tab II along with the information we have marked may be withheld under section 552.111.

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,



June B. Harden  
Assistant Attorney General  
Open Records Division

JBH/ch

Ref.: ID# 121446

Enclosures: Submitted documents

cc: Mr. James P. Burton  
30 West Harriett Avenue, No. 4C  
Palisades Park, New Jersey 07650  
(w/o enclosures)