



March 26, 1999

Mr. Clark Cornwell
Border Projects Management Division
Texas Water Development Board
P. O. Box 13231
Austin, Texas 78711-3231

OR99-0845

Dear Mr. Cornwell:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 123052.

The Texas Water Development Board (the "board") received a request for various categories of information concerning the North Alamo Water Supply Corporation ("NAWSC"). Specifically, the requestor asks for "[c]opies of all applications for loans, grants, or other financial assistance submitted by NAWSC," and "[c]opies of all plans, specifications or other documents which depict the location of NAWSC existing or proposed facilities and operations." In response to the request, you submit to this office for review certain records, submitted as Documents 1-10, which you assert are responsive. You state that the submitted information is excepted from disclosure pursuant to sections 552.107 and 552.111 of the Government Code.¹ We have considered your arguments and claimed exceptions, and reviewed the submitted information.

We first consider whether Documents 1, 5, and 8-10, for which you have raised section 552.107, may be withheld under the claimed exception. Section 552.107(1) excepts from disclosure communications that reveal client confidences or the attorney's legal opinion or advice. Open Records Decision Nos. 589 at 1 (1991), 574 at 3 (1990), 462 at 9-11(1987). 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. Open Records Decision No. 574 at 5 (1990). However,

¹We assume that you will release other responsive records to the extent they exist, since you have not raised any other exception nor submitted other records.

section 552.107(1) does not protect purely factual information unless the factual information constitutes a confidence that the client related to the attorney. *See id.* at 5. We have reviewed the records and agree that Documents 1, 5, and 8-10 are excepted from disclosure by section 552.107.

We next consider whether Documents 2-4 and 6-7, for which you have raised section 552.111, may be withheld under the claimed exception. 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. Upon review of the information contained in Documents 2-4 and 6-7, we conclude that *some* of the information contained therein reflects the policymaking processes of the board, and thus may be withheld from disclosure under section 552.111. Accordingly, we have marked the submitted information that is excepted from disclosure by section 552.111. You must release the remaining information.

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.

Sincerely,

A handwritten signature in black ink that reads "Sam Haddad". The signature is written in a cursive style with a large, looping initial "S".

Sam Haddad
Assistant Attorney General
Open Records Division

SH/nc

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Enclosures: Submitted documents

cc: Ms. Julia Giddens
Winstead, Sechrest & Minick
100 Congress Ave., Suite 800
Austin, Texas 78701-4042
(w/o enclosures)