



July 16, 1999

Ms. Theda Lambert
General Counsel
Texas Department of Licensing & Regulation
920 Colorado
Austin, Texas 78701

OR99-2004

Dear Ms. Lambert:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 126398.

The Texas Department of Licensing and Regulation (the "department") received a written request for "all correspondence between and all other public documents that may be filed with [the department] and the following individuals, organizations or their agents for the years listed." You state that most of the requested information will be made available to the requestor. You seek to withhold, however, three particular memoranda pursuant to sections 552.107(1) and 552.111 of the Government Code.

Section 552.107(1) of the Government Code protects information coming within the attorney-client privilege. Open Records Decision No. 574 (1990). In instances where an attorney represents a governmental entity, the attorney-client privilege protects only an attorney's legal advice and client confidences communicated to the attorney. *Id.* Exhibit "B" consists of a department employee's request for a legal opinion from an attorney with the department's general counsel, while Exhibit "C" consists of the attorney's response to the employee. We agree that these two documents may properly be withheld from the public pursuant to section 552.107(1).

On the other hand, Exhibit "D" contains neither an attorney's legal advice nor a client confidence. Consequently, we must address whether this document may be withheld from the public pursuant to section 552.111 of the Government Code. Section 552.111 protects from required public disclosure interagency and intra-agency memoranda and letters, but only to the extent that they contain advice, opinion, or recommendation intended for use in the policymaking process. Open Records Decision No. 615 at 5 (1993); *see also Austin v. City of San Antonio*, 630 S.W.2d 391 (Tex. App.--San Antonio 1982, writ ref'd n.r.e.). Additionally, section 552.111 does not protect facts and written observation of facts and events that are severable from advice, opinions, and recommendation. Open Records Decision No. 615 at 5.

After reviewing the contents of Exhibit "D," we conclude that this document consists almost entirely of factual information. Consequently, section 552.111 is inapplicable to this document. The department must release Exhibit "D" in its entirety.

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, appearing to read "June B. Harden". The signature is written in a cursive style with a large initial "J" and "H".

June B. Harden
Assistant Attorney General
Open Records Division

JBH/RWP/eaf

Ref: ID# 126398

Encl. Submitted documents

cc: Mr. Brad McCord
2002-A Guadalupe Street, # 314
Austin, Texas 78705
(w/o enclosures)