



September 24, 1999

Ms. Guadalupe Cuellar
Assistant City Attorney
The City of El Paso
2 Civic Center Plaza
El Paso, Texas 79901-1196

OR99-2696

Dear Ms. Cuellar:

You have asked whether certain information is subject to required public disclosure under the Public Information Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 127546.

The City of El Paso (the "city") received two requests, from the same requestor, for various categories of records "regarding the city's consideration of annexing land," in "proposed annexation areas." In response to the request, you submit to this office for review the records, submitted as Exhibits 1a-b and 2a-b for the first request and Exhibits 1a-b through 14 for the second request, which you assert are responsive.¹ You state that "[m]ost of the documents requested have or will be released." You assert, however, that the remaining submitted documents are excepted from disclosure pursuant to sections 552.107 and 552.111 of the Government Code.² We have considered your arguments and claimed exceptions, and reviewed the submitted information.

We first consider whether the submitted information, for which you raised section 552.107 as applicable, 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

¹In those instances where you have redacted information, you have submitted the redacted copy of the information as Exhibit "a" and the non-redacted copy of the information as Exhibit "b."

²Although you cite to section 552.107, in your response to the second open records request, you did not brief our office on the exception nor mark the information for our review. See Gov't Code § 552.301(b); Open Records Decision No. 363 (1983). We note that chapter 552 of the Government Code places on the custodian of public records the burden of establishing that records are excepted from public disclosure. Attorney General Opinion H-436 (1974). Therefore, in this ruling, we do not address the applicability of section 552.107 to the information requested in the second open records request.

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, 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, submitted as Exhibits 5a-b, 7a-b, 8a-b, 9a-b, 10a-b, and 14, and agree that the information you seek to withhold under section 552.107 may be withheld by the exception, since the information "reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinions."

We next address whether the remaining information, or portions thereof as marked, are excepted from disclosure 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. *See* Open Records Decision No. 137 (1976) (discussing pre-decisional and post-decisional documents). 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 records you seek to withhold under section 552.111, we conclude that the information contained therein reflects the policymaking processes of the city, and thus may be withheld from disclosure under claimed exception.

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,



Sam Haddad

Assistant Attorney General
Open Records Division

SH/nc

Ref.: ID# 127546

encl. Submitted documents

cc: Mr. Patrick McDonnell
El Paso Times
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(w/o enclosures)