



November 23, 1999

Ms. Ruth Soucy
Legal Counsel
Open Records Division
Comptroller of Public Accounts
L B J State Office Building
111 East 17th Street
Austin, Texas 78774-0100

OR99-3380

Dear Ms. Soucy:

You ask whether certain information is subject to required public disclosure under the, Texas Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 129601.

The Comptroller of Public Accounts (the "Comptroller") received a request for copies of "all audit memoranda, including any AMs, and all internal correspondence . . . and external correspondence . . . regarding Tex. Tax Code Ann. § 151.316(a)(8) and (c)(2) (Vernon 1992 & Supp. 1999) and 34 Tex. Admin. Code § 3.296(b)(1) and (2), (g)(9)(C), and (h)(i) (West 1999), [to include] current and superceded documents." You assert that one responsive document is excepted from disclosure in its entirety under section 552.107(1) of the Government Code. You also assert that portions of this document are excepted from disclosure under section 552.111 of the Government Code. You assert that a portion of a second document is excepted from disclosure under section 552.111 of the Government Code.

Section 552.107(1) of the Government Code states that information is excepted from required public disclosure if

it is information that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Texas Rules of Civil Evidence, the Texas Rules of Criminal

Although section 552.107(1) appears to except information within rule 1.05 of the Texas State Bar Disciplinary Rules of Professional Conduct, the rule cannot be applied as broadly as written to information that is requested under the Public Information Act. Open Records Decision No. 574 at 5 (1990) at 5. To prevent governmental bodies from circumventing the Public Information Act by transferring information to their attorneys, section 552.107(1) is limited to material within the attorney-client privilege for confidential communications; "unprivileged information" as defined by rule 1.05 is not excepted under section 552.107(1). Open Records Decision Nos. 574 at 5;(1990) 462 at 13-14 (1987). Consequently, the exception applies only to information that reveals attorney advice and opinion or client confidences. See Open Records Decision No. 574 (1990). We have reviewed the first document. We conclude that the Comptroller may withhold from disclosure this entire document based on section 552.107(1) of the Government Code.¹

We now address your claim that a portion of the second document is protected from disclosure by section 552.111 of the Government Code excepts from required public disclosure:

An interagency or intra agency memorandum or letter that would not be available by law to a party in litigation with the agency.

This exception applies to a governmental body's internal communications consisting of advice, recommendations, or opinions reflecting the policymaking process of the governmental body at issue. See Open Records Decision No. 615 (1993). An agency's policymaking function, 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. See *id.* at 5-6; see also *City of Garland v. Dallas Morning News*, 969 S.W.2d 548 (Tex. App.-Dallas 1998, pet. granted).

You explain that the Comptroller's office is required by section 111.001 of the Tax Code to administer title 2 of the Tax Code. After review of the information, we find that it consists of a recommendation concerning the Comptroller's policymaking process. We therefore conclude that, based on section 552.111, the Comptroller may withhold from disclosure the information the Comptroller marked on the second document.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts

¹In light of our conclusion under section 552.107(1), we need not address your section 552.111 claim for the first document.

presented to us in this request and may 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 cursive script that reads "Kay Hastings".

Kay H. Hastings
Assistant Attorney General
Open Records Division

KHH/jc

Ref.: ID# 129601

Encl.: Submitted documents

cc: Mr. Eric Stein
Ryan & Company
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Austin, Texas 78701
(w/o enclosures)