



January 12, 2000

Mr. Kerry E. Russell
Lloyd, Grosselink, Blevins, Rochelle,
Baldwin & Townsend, P.C.
111 Congress Avenue, Suite 1800
Austin, Texas 78701

OR2000-0109

Dear Mr. Russell:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 131327.

The North Texas Municipal Water District (the "district"), which you represent, received two written requests for information pertaining to a proposed landfill. In Open Records Letter No. 98-0329 (1998), this office ruled on the applicability of section 552.111 to some of the records at issue here; consequently, we need not further address section 552.111 with regard to those particular documents at this time. *See Gov't Code* § 552.301(a). You now contend, however, that portions of those documents are excepted from required public disclosure pursuant to section 552.113 of the Government Code. You also seek to withhold other requested documents, to the extent they are held by the district, pursuant to sections 552.107(1), 552.111, and 552.113 of the Government Code.

Section 552.107(1) of the Government Code excepts from public disclosure information coming within the attorney-client privilege. In instances where an attorney represents a governmental entity, the attorney-client privilege protects only an attorney's legal advice and client confidences. *See Open Records Decision No. 574 (1990)*. After reviewing the information at issue, we agree that some of the requested information is protected by the attorney-client privilege. We have marked the documents to indicate the information that the district may withhold pursuant to section 552.107(1).

Section 552.111 of the Government Code 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.). 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 documents at issue, we agree that some of the information you submitted to this office contains advice, opinion, or recommendation coming within the protection of section 552.111; we have marked the documents, or portions thereof, that the district may withhold under this exception. The remaining portions of those documents consist of purely factual material, none of which is protected from public disclosure under section 552.111. Consequently, the district must release the remaining information in those documents to the requestors.

Section 552.113 of the Government Code provides in relevant part as follows:

(a) Information is excepted from [required public disclosure] if it is:

....

(2) geological or geophysical information or data, including maps concerning wells, except information filed in connection with an application or proceeding before an agency[.]

In Open Records Decision No. 627 (1994), this office concluded that section 552.113(a)(2) protects from public disclosure only commercially valuable geological and geophysical information regarding the exploration or development of natural resources. Open Records Decision No. 627 at 3-4 (1994) (overruling rationale of Open Records Decision No. 504 (1988)). After reviewing the information you submitted to this office, we conclude that section 552.113(a)(2) was not intended to protect the type of information at issue here. We therefore conclude that the district may not withhold any of the requested information pursuant to section 552.113.¹

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

¹Our conclusion that the district may withhold certain information pursuant to sections 552.107(1) and 552.111 is premised on the assumption that the district has complied with the requirements of section 552.301(d) of the Government Code by providing the requestor, within ten business days of the district's receipt of the records request, with 1) a written statement that the district has requested a decision from this office and 2) a copy of the district's written communication to this office asking for a decision. *See also* Gov't Code § 552.302.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/RWP/nc

Ref.: ID# 131327

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