



April 5, 2000

Ms. Angela K. Moorman
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Attorneys at Law
111 Congress Avenue, Suite 1800
Austin, Texas 78701

OR2000-1317

Dear Ms. Moorman:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 134204.

The North Texas Municipal Water District (the "district") received a request for information related to the district's waste management functions. You state that you have made certain responsive information available to the requestor. You also indicate that you are relying on this office's prior rulings based upon sections 552.107 and 552.111 to withhold certain responsive information. *See* Open Records Letter Nos. OR2000-0109 (2000), OR98-0329 (1998).¹ In your letter to our office dated February 14, 2000, you claimed that the information you have submitted for our review is excepted from disclosure under sections 552.101, 552.107 and 552.111 of the Government Code. However, in subsequent correspondence dated February 22, 2000, you indicate that you are withdrawing your claim under section 552.101. We have considered the exceptions you claim and have reviewed the submitted information.

You argue that some of the requested information may be withheld 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. An agency's policymaking functions, however, do not encompass internal administrative or personnel matters;

¹A governmental body is not required to seek a determination from this office regarding the disclosure of information if the governmental body has previously requested and received a determination from this office concerning precisely the same information. Gov't Code § 552.301(a).

disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. Open Records Decision No. 615 (1993) at 5-6. 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. You seek to withhold under section 552.111 the document entitled "Administrative Memorandum No. 1961" ("memo 1961"). We believe that the information in this memorandum relates to personnel matters and does not reflect the policymaking function of the district. Therefore, you must release memo 1961. Additionally, you have marked the entire document entitled "Administrative Memorandum No. 1690" ("memo 1690") as excepted from disclosure pursuant to section 552.111. While some of the information pertains to the policy functions of the district, some of the information contained in this document is purely factual. We have marked those portions of memo 1690 that may be withheld from required public disclosure under section 552.111. The unmarked information in memo 1690 must be released to the requestor. You additionally assert that the information you have marked in documents entitled "Cultural Resources Potential for the Melissa Site, Collin County, Texas" ("Cultural Resources"), "Administrative Memorandum No. 1877" ("memo 1877") and "Administrative Memorandum No. 1958" ("memo 1958") is excepted from disclosure under section 552.111 of the Government Code. We agree that you may withhold the information you have bracketed in "Cultural Resources." However, we believe that section 552.111 excepts from disclosure only certain portions of the information you have bracketed in memo 1877 and memo 1958. Accordingly, we have marked with parentheses the information in these memos we believe is purely factual and, as such, must be released to the requestor.

You contend that two submitted documents are excepted from public disclosure under section 552.107(1) of the Government Code. Section 552.107(1) excepts from disclosure information that an attorney cannot disclose because of a duty to his client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107(1) 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; it does not apply to all client information held by a governmental body's attorney. Open Records Decision No. 574 at 5 (1990). When communications from attorney to client do not reveal the client's communications to the attorney, section 552.107(1) protects them only to the extent that such communications reveal the attorney's legal opinion or advice. Open Records Decision No. 574 at 3 (1990). In addition, basically factual communications from attorney to client, or between attorneys representing the client, are not protected. *Id.* You have submitted two letters from the district's special counsel to the district's former executive director. We agree that some of the information contained in the two letters is excepted under section 552.107(1). Therefore, we have marked the information the district may withhold under section 552.107(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.

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,



Carla Gay Dickson
Assistant Attorney General
Open Records Division

CGD/ch

Ref: ID# 134204

Encl. Submitted documents

cc: Ms. Georgiann Evans
9174 County Road 474
Anna, Texas 75409
(w/o enclosures)