



May 16, 2001

Ms. Amanda Crawford
Public Information Coordinator
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

OR2001-2021

Dear Ms. Crawford:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 147292.

The Office of the Attorney General (the "OAG") received a written request for "all documentation of any discipline, reprimands, or any other cause of adverse action against" a named OAG employee. You state that the OAG will provide the requestor with the majority of the requested information. You contend, however, that other documents coming within the ambit of the request are excepted from disclosure under sections 552.107(1) and 552.111 of the Government Code. You have submitted to this office as representative of the information you seek to withhold three OAG documents: a series of e-mail communications between attorneys of the OAG's Open Records Division (the "division"), a draft of an open records letter ruling with attorneys' handwritten notes, and a published open records letter ruling.¹ We will discuss each of these documents in turn.

¹In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision No. 499 (1988), 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

We first address the series of e-mail communications between the division attorneys discussing the treatment of a request for an open records ruling. You contend that these communications are excepted from public disclosure pursuant to section 552.111 of the Government Code. Section 552.111 of the Government Code excepts interagency and intra-agency memoranda and letters, but only to the extent that they contain advice, opinion, or recommendation intended for use in the governmental body's policymaking process. Open Records Decision No. 615 (1993) at 5. The purpose of this section is "to protect from public disclosure advice and opinions *on policy matters* and to encourage frank and open discussion within the agency in connection with its decision-making processes." *Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.--San Antonio 1982, writ ref'd n.r.e.) (emphasis added); *see also City of Garland v. Dallas Morning News*, 43 Tex. Sup. Ct. J. 303 (Jan.13, 2000). In Open Records Decision No. 615 at 5, this office held that

to come within the [section 552.111] exception, information must be related to the *policymaking* functions of the governmental body. An agency's policymaking functions do not encompass routine internal administrative and personnel matters [Emphasis in original.]

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. If, however, the factual information is so inextricably intertwined with material involving advice, opinion, or recommendation as to make separation of the factual data impractical, that information may be withheld. Open Records Decision No. 313 (1982).

You contend that the e-mail communications are excepted from disclosure under section 552.111 because disclosure of the communications

would reveal this office's advice, opinions, and recommendations regarding the issuance of Open Records Letter Rulings. . . . The internal communications submitted reveal the legal opinions and thought processes of the attorneys in the Open Records Division. . . . Open Records Letter Rulings are, by their very nature, a core policy related function of the OAG.

After reviewing your arguments and the information at issue, we conclude that a majority of the e-mail communications consists of the advice, opinion, or recommendation of division attorneys regarding policy matters. We further conclude that any factual information contained in the e-mails is inextricably intertwined with information protected by section 552.111. The OAG therefore may withhold these and other policy related e-mail communications pursuant to section 552.111 of the Government Code.

You next contend that the preliminary draft of an open records letter ruling, with division attorneys' handwritten notes, is excepted from public disclosure pursuant to section 552.107(1) of the Government Code, which protects information coming within the

attorney-client privilege. *See* 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 or opinion and client confidences. *Id.* After reviewing the draft document, we conclude that this document constitutes legal advice and opinion. Accordingly, the OAG may withhold this and similar draft documents with attorneys' handwritten notes in their entirety pursuant to section 552.107(1) of the Government Code.

Finally, you have submitted as responsive to the request an issued open records letter ruling. You have not made any specific argument for withholding this type of document. We further note that open records letter rulings issued by this office are generally considered to be available to the public, and in fact these rulings are now posted on the OAG's website. *See also* Gov't Code § 552.02(a)(15) ("information regarded as open to the public under an agency's policies" is public information and not excepted from public disclosure). We therefore conclude that the OAG must release all issued open records letter rulings that come within the ambit of the request.

In summary, the OAG may withhold pursuant to section 552.111 all e-mail communications concerning the resolution of requests for open records decisions that concern policy, as opposed to administrative or personnel, matters. The OAG may also withhold all drafts of open records letter rulings, including attorneys' handwritten notes, pursuant to section 552.107(1) of the Government Code. However, the OAG must release all issued open records letter rulings coming within the ambit of the request.

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).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

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,



Karen A. Eckerle
Assistant Attorney General
Open Records Division

KAE/RWP/seg

Ref: ID# 147292

Encl. Submitted documents

cc: Ms. Sharon Menger
308 West Goforth
Buda, Texas 78610
(w/o enclosures)