



June 21, 2001

Mr. Greg L. Gilliland  
Open Government Section  
Comptroller of Public Accounts  
P.O. Box 13528  
Austin, Texas 78711-3528

OR2001-2635

Dear Mr. Gilliland:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID # 148621.

The Comptroller of Public Accounts (the “comptroller”) received a request for sixteen categories of information relating to the state employee charitable campaign policy committee (the “committee”).<sup>1</sup> You state that much of the requested information has been released. You claim that the remaining information is excepted from disclosure under sections 552.107 and 552.111 of the Government Code. We have considered the exceptions you raise and have reviewed the representative samples of information you submitted.<sup>2</sup>

Section 552.107(1) of the Government Code excepts from disclosure “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 Evidence, or the Texas Disciplinary Rules of Professional Conduct[.]” This exception protects information that an attorney cannot disclose because of a duty to the client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107(1) excepts from disclosure only “privileged information,” that is, information that reflects either confidential communications from the client to the attorney

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<sup>1</sup>You explain that the committee exists under section 659.140 of the Government Code. The requestor points out that employees of the comptroller’s office serve on the committee.

<sup>2</sup>This letter ruling assumes that the submitted representative samples of information are truly representative of the responsive information as a whole. This ruling neither reaches nor authorizes the comptroller to withhold any responsive information that is substantially different from the submitted information. See Gov’t Code § 552.301(e)(1)(D); Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

or the attorney's legal advice or opinions; it does not apply to all client information held by a governmental body's attorney. See ORD 574 at 5. Section 552.107(1) does not protect purely factual information and thus does not except from disclosure factual recounting of events or documentation of calls made, meetings attended, and memos sent. *Id.*

You state that the two documents for which the comptroller claims an exception under section 552.107(1) are an assistant attorney general's memoranda to the members of the committee. You explain that the assistant attorney general serves as the committee's legal counsel and that the memoranda contain legal advice to the committee. Based on your representations and our review of the documents in question, we find that they constitute privileged attorney-client communications. Accordingly, we conclude that these documents are excepted from disclosure under section 552.107(1).

Section 552.111 of the Government Code excepts from disclosure "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." The purpose of section 552.111 is to protect advice, opinion, and recommendation in the decisional process and to encourage open and frank discussion in the deliberative process. See *Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.--San Antonio 1982, no writ); Open Records Decision No. 538 at 1-2 (1990). In Open Records Decision No. 615 (1993), this office re-examined the statutory predecessor to section 552.111 in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ). We determined that section 552.111 excepts only those internal communications that consist of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. See ORD 615 at 5. A governmental body's policymaking functions do not encompass routine internal administrative or personnel matters, and disclosure of information about such matters will not inhibit free discussion of policy issues among agency personnel. *Id.*; see also *City of Garland v. The Dallas Morning News*, 22 S.W.3d 351 (Tex. 2000) (holding that personnel-related communications not involving policymaking were not excepted from public disclosure under section 552.111). A governmental body's policymaking functions do include administrative and personnel matters of broad scope that affect the governmental body's policy mission. See Open Records Decision No. 631 at 3 (1995).

Section 552.111 does not protect facts and written observations of facts and events that are severable from advice, opinions, and recommendations. See ORD 615 at 5. But if factual information is so inextricably intertwined with material involving advice, opinion, or recommendation as to make severance of the factual data impractical, the factual information also may be withheld under section 552.111. See Open Records Decision No. 313 at 3 (1982).

You state that two groups of responsive documents contain the opinions and recommendations of members of the committee regarding various charitable organizations. You assert that these documents are excepted from disclosure under section 552.111. We have reviewed the documents in question and have marked information that the comptroller may withhold under section 552.111.

Lastly, you claim that two other groups of draft documents also are protected from disclosure under section 552.111. This office has concluded that a preliminary draft of a document that is intended for public release in its final form necessarily represents the advice, opinion, and recommendation of the drafter with regard to the form and content of the final document, so as to be excepted from disclosure under the statutory predecessor to section 552.111. *See* Open Records Decision No. 559 at 2 (1990) (applying statutory predecessor). Section 552.111 protects factual information in the draft that also will be included in the final version of the document. *See id.* at 2-3. Thus, section 552.111 encompasses the entire contents, including comments, underlining, deletions, and proofreading marks, of a preliminary draft of a policymaking document that will be released to the public in its final form. *See id.* at 2.

You explain that one set of documents represents drafts of rules that the committee is considering for adoption under its rule-making authority. You state that the other document in question is a draft of the proposed minutes of a committee meeting. You inform us that the approved meeting minutes will be released to the public. We presume that the final draft of the proposed committee rules will be made available for public comment. Based on your representations and our review of the draft rules and committee minutes, we conclude that the comptroller may also withhold these documents under section 552.111.

In summary, the comptroller may withhold the memoranda from the committee's legal counsel under section 552.107(1). The two groups of draft documents may be withheld in their entirety under section 552.111. The marked portions of the other two groups of documents also are excepted from disclosure under section 552.111. The remaining information must be released.

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

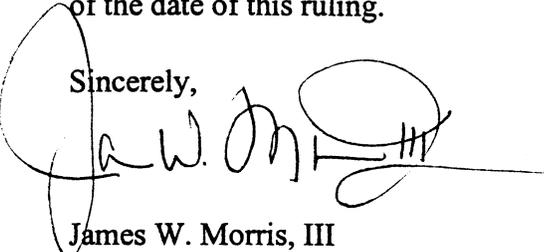
records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these 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,



James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/sdk

Ref: ID# 148621

Enc. Marked documents

c: Mr. Brad Rockwell  
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(w/o enclosures)