



August 8, 2001

Ms. Cathy Bradford  
Open Records Coordinator  
Texas Parks & Wildlife  
4200 Smith School Road  
Austin, Texas 78744-3291

OR2001-3457

Dear Ms. Bradford:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 150457.

The Texas Parks and Wildlife Department (the "department") received a written request for the following information:

1. All records, correspondence, reports, emails [sic], or other documents of [the department] from January 1, 1997 to the present relating to an application by the Guadalupe Brazos River Authority (GBRA) to the Texas Natural Resource Conservation Commission (TNRCC) to
  - (a). amend the GBRA Certificate of Adjudication No. 18-2074D (Canyon Reservoir) [and]
  - (b). amend the GBRA Certificate of Adjudication No. 18-2074E (Canyon Reservoir)
2. The agenda, minutes, audio or video recordings of any meeting of the Commissioners of [the department] at which discussion or deliberation of either of the above-mentioned GBRA amendments to the Certificate of Adjudication was posted.

You state that some of the requested information will be made available to the requestor and that the department is seeking clarification with regard to other requested information. *See* Gov't Code § 552.222(b) (authorizing requests for clarification). You contend, however, that certain e-mail communications, draft documents, and personal notes, representative samples of which you submitted to this office, are excepted from public disclosure pursuant to sections 552.107(1) and 552.111 of the Government Code.<sup>1</sup>

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 (1993). We agree that much of the requested information consist of advice, opinion, or recommendation protected by section 552.111.

Additionally, in Open Records Decision No. 559 (1990), this office held that a preliminary draft of a document *that is intended for release in a final form* necessarily represents the advice, opinion, and recommendation of the drafter as to the form and content of the final document and as such may be withheld pursuant to the predecessor of section 552.111. The draft documents before us directly pertain to policy matters concerning the department. To the extent that these documents in fact are intended for release to the public in their final form, we conclude that the department may withhold these and similar draft documents coming within the ambit of the current open records request in their entirety pursuant to section 552.111. However, because you state that the final version of one of the draft documents at issue was not ever released to the public, we conclude that that document must be released to the requestor. We have marked the submitted documents to indicate the information the department may withhold pursuant to section 552.111.

Section 552.107(1) of the Government Code protects information coming within the attorney-client privilege.<sup>2</sup> Section 552.107(1) excepts 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 excepts from public disclosure only "privileged

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<sup>1</sup>In 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). 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.

<sup>2</sup>Although you also raise the attorney-client privilege in the context of section 552.101 of the Government Code, this privilege is more properly deemed to be an aspect of section 552.107(1). *See* Open Records Decision No. 574 (1990).

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). However, after reviewing the information at issue, we conclude that the submitted records do not contain any information protected by the attorney-client privilege that is not also excepted from disclosure under section 552.111. Accordingly, we need not further address the applicability of section 552.107(1) to the information at issue.

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,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/RWP/seg

Ref: ID# 150457

Enc. Submitted documents

c: Mr. Bill Aleshire  
Hill, Gilstrap, Riggs, Adams & Graham, L.L.P.  
1005 Congress Avenue, Suite 880  
Austin, Texas 78701  
(w/o enclosures)