



October 9, 2001

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

OR2001-4560

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# 152994.

The Office of the Attorney General (the "OAG") received a request for "all documents that the attorney general or the attorney general's office has created or received since June 1, 2001, regarding special taxing districts." You indicate that you have released some of the requested information. You claim, however, that some of the requested information is excepted from disclosure under sections 552.101, 552.107, 552.111, and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Section 552.117 of the Government Code excepts from disclosure the home address and telephone number, social security number, and family member information of a current or former official or employee of a governmental body who requests that this information be kept confidential under section 552.024. We have read this exception to include the home e-mail addresses of government officials or employees as well. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). You state that, prior to the OAG's receipt of the current request, the official and the former employee identified in the

¹We 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 Nos. 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.

submitted documents made proper elections under section 552.024. Therefore, we agree that the OAG must withhold the information you have marked in the submitted documents under section 552.117.

Section 552.107(1) of the Government Code excepts 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[.]” While section 552.107(1) appears to apply to information within rule 1.05 of the Texas Disciplinary Rules of Professional Conduct, this office has determined that section 552.107 cannot be applied as broadly as written to information in the possession of an attorney for a governmental body. Open Records Decision No. 574 (1990). Section 552.107(1) was found to protect only the attorney’s communication of legal advice or opinion to the client and communications from a client to an attorney where those communications are made in confidence and in furtherance of the attorney rendering professional legal service to the governmental body. *Id.* at 5. Moreover, section 552.107(1) does not except purely factual information from disclosure. *Id.* We determine the applicability of section 552.107(1) on a case-by-case basis. We agree that some of the information you have marked reflects an attorney’s legal advice or opinions. The OAG may therefore withhold the information we have marked under section 552.107.

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.” 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 do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. Open Records Decision No. 615 at 5-6 (1993). Additionally, section 552.111 does not generally except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. *Id.* at 4-5. But a preliminary draft of a policymaking document that has been released or is intended for release in final form is excepted from disclosure in its entirety under section 552.111 because such a draft necessarily represents the advice, recommendations, or opinions of the drafter as to the form and content of the final document. Open Records Decision No. 559 at 2 (1990). However, severable factual information appearing in the draft but not in the final version is not excepted by section 552.111. *Id.* We have marked the information that the OAG may withhold under section 552.111.

To summarize: (1) the OAG must withhold the information you have marked in the submitted documents under section 552.117; (2) we have marked the information that the OAG may withhold under section 552.107; and (3) we have marked the information that the OAG may withhold under section 552.111.

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/er

Ref: ID# 152994

Enc: Submitted documents

c: Mr. Brooks Egerton
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(w/o enclosures)