



November 5, 2001

Ms. Sarajane Milligan  
Assistant County Attorney  
Harris County  
1019 Congress, 15<sup>th</sup> Floor  
Houston, Texas 77002-1700

OR2001-5077

Dear Ms. Milligan:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 154350.

The Harris County Attorney's Office (the "county attorney") received a request for a draft proposal provided to the Harris County Commissioner's Court and a letter requesting a legal opinion on the proposal. You claim that the requested information is excepted from disclosure under sections 552.107 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You contend that some of the submitted information is excepted from disclosure under section 552.107. Section 552.107 provides in relevant part that information is excepted from required public disclosure if:

it is 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 Evidence, the Texas Rules of Criminal Evidence, or the Texas Disciplinary Rules of Professional Conduct.

Gov't Code § 552.107(1). 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 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). Based on our review of the submitted information, we conclude that the document in Exhibit B is a confidential communication made in furtherance of the county attorney

rendering professional legal services, and is therefore excepted from disclosure under section 552.107(1) of the Government Code.

Section 552.111 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." This exception applies not only to internal memoranda, but also to memoranda prepared by consultants of a governmental body. Open Records Decision Nos. 462 at 14 (1987), 298 at 2 (1981). 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. *City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 364 (Tex. 2000); *Arlington Indep. Sch. Dist. v. Texas Attorney Gen.*, 37 S.W.3d 152 (Tex. App.--Austin 2001, no pet.). 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. ORD 615 at 5-6. Additionally, section 552.111 does not generally except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. *Arlington Indep. Sch. Dist.*, 37 S.W.3d at 160; Open Records Decision No. 615 at 4-5 (1993). The 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). You state that the document in Exhibit C is a draft order that relates to a proposed policy change for Harris County. Based upon your assertions and our review of the submitted document, we conclude that the information at issue is excepted from public disclosure under section 552.111.

In summary, the document in Exhibit B is a confidential communication made in furtherance of the county attorney rendering professional legal services, and is therefore excepted from disclosure under section 552.107(1) of the Government Code. The draft order in Exhibit C may be withheld from disclosure 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).

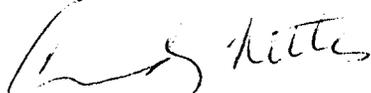
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/seg

Ref: ID# 154350

Enc. Submitted documents

c: Mr. Mark H. Neal  
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Angleton, Texas 77515  
(w/o enclosures)