



January 8, 2002

Ms. Zandra L. Narvaez
Legal Services Division
City Public Service of San Antonio
P.O. Box 1771
San Antonio, Texas 78296-1771

OR2002-0121

Dear Ms Narvaez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 157036.

The City Public Service of San Antonio ("CPS") received a request for:

1. Any and all records relating to any open and proposed CPS and STNP audits;
2. Any and all final CPS and STNP audits since July 23, 2001;
3. Any and all security related audits (open and final);
4. STP Nuclear Fuel Audit final report dated December 28, 2000.

You state that documents responsive to the request that CPS does not seek to withhold have been made available to the requestor. You also state that, due to the agreed settlement since your initial request for an opinion, you no longer seek to except Exhibit C, Final Audit Report, from disclosure, and it has been made available to the requestor as well. You claim that Exhibit B is not subject to the Public Information Act, or alternatively, you claim that Exhibit B, together with the remainder of the submitted information, is excepted from disclosure under sections 552.101 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you argue that Exhibit B is not considered public information pursuant to section 552.002 of the Government Code. Section 552.021 of the Government Code provides for public access to "public information." Section 552.002 defines "public information" as

information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body; or
- (2) for a governmental body and the governmental body owns the information or has a right of access to it.

Gov't Code § 552.002. This office has additionally observed that certain factors are relevant, although not exhaustive, in deciding whether a document is essentially a governmental or personal document: who prepared the document; the nature of its contents; its purpose or use; who possessed it; who had access to it; whether the governmental body required its preparation; and whether its existence was necessary to or in furtherance of official business. Open Records Decision No; 635 (1995). *See also* Open Records Decision Nos. 626 (1994) (handwritten notes taken during oral interview by Texas Department of Public Safety promotion board members public are public information), 450 (1986) (notes of appraisers taken in the course of teacher appraisals were public information), 120 (1976) (faculty members' written evaluations of doctoral student's qualifying exam are subject to act). *But see* Open Records Decision Nos. 635 (1995) (calendar purchased and maintained by a commission employee who had sole access to it was not subject to the act), 77 (1975) (personal notes made by individual faculty members for their own use as memory aids were not subject to the act).

You state that Exhibit B "relates to open and pending audits, and as such, has not been utilized except as a tool of CPS Audit Services employees, or in regard to STP open audits, the STP Audit Group, for their use in preparing final audit reports" and "has not been used in connection with transacting official business." We conclude, however, that Exhibit B is information used in connection with the governmental employee's official business as they relate to conducting audits of the government body. Therefore, based on our review of the submitted information, we believe that Exhibit B consists of "information that is collected, assembled or maintained under a law or ordinance or in connection with the transaction of official business." *See* Gov't Code § 552.002. Consequently, we conclude that the Exhibit B is public information subject to the Act.

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." 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. Yet, where a document is a genuine preliminary draft that has been released or is intended for release in final form, factual information in that draft which also appears in a released or releasable final version is excepted from disclosure by section 552.111. Open Records Decision No. 559 (1990). However, severable factual information appearing in the draft but not in the final version is not excepted by section 552.111. *Id.*

You state that the information in Exhibits A-1¹, B, and E consist of draft reports and audit working papers that contain opinions and recommendations regarding current policy formation and that the final form has been released. Based on your representations and our review of the submitted information, we agree that Exhibits A-1, B, and E may be withheld in their entirety under section 552.111 of the Government Code. Because section 552.111 is dispositive in regard to Exhibit A-1, we need not address your argument under 552.101.

In summary, we conclude that Exhibit B is public information subject to the Act and Exhibits A-1, B, and E may be withheld in their entirety under section 552.111 of the Government Code.

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

¹Although you do not make a specific section 552.111 argument in regard to Exhibit A-1, the information contained in Exhibit A-1 is also contained in Exhibit B for which a timely section 552.111 argument was submitted to this office.

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 Texas Building and Procurement 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,



W. Montgomery Meitler
Assistant Attorney General
Open Records Division

WMM/sdk

Ref: ID# 157036

Enc: Submitted documents

c: Mr. Brian Collister
Investigative Reporter
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(w/o enclosures)