



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 17, 2004

Ms. Susan C. Rocha
Denton, Navarro, Rocha & Bernal
2517 North Main Avenue
San Antonio, Texas 78212

OR2004-9727

Dear Ms. Rocha:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 213032.

The San Antonio Water System ("SAWS"), which you represent, received a request for information concerning communications between SAWS and the Kinney County Groundwater Conservation District (the "district"), including communications with four named representatives of the district, for a specified period of time. You advise us that you contacted the requestor seeking clarification of the scope the request. *See* Gov't Code § 552.222 (providing that a governmental body may ask the requestor to clarify the request if what information is requested is unclear to the governmental body); *see also* Open Records Decision No. 663 (1999) (concluding Act permits tolling of ten business day deadline imposed by section 552.301 during interval in which requestor and governmental body are communicating in good faith to narrow or clarify request). You state that you received clarification from the requestor. Further, you state and provide documentation showing that SAWS has released some information to the requestor. You claim that the submitted information is excepted from disclosure under section 552.111 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information.

¹We understand you to represent that SAWS no longer wishes to assert the remaining exceptions to disclosure you raised in your letter of September 10, 2004.

Initially, we address your assertion that some of the submitted information contains both responsive and non-responsive information. You have highlighted the non-responsive information. We note that SAWS need only release information responsive to the requestor's request. Thus, you may redact any information not responsive to the request for information at issue here.

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 deliberative or policymaking processes of the governmental body. Open Records Decision No. 615 at 5-6 (1993). An agency's policymaking functions, however, 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. See *Arlington Indep. Sch. Dist. v. Texas Atty. Gen.*, 37 S.W.3d 152, 160 (Tex. App.—Austin 2001, no writ); Open Records Decision No. 615 at 4-5.

You state that the information you seek to withhold under section 552.111 consists of internal communications pertaining to policymaking matters of SAWS. Upon review, we agree that the submitted information consists of advice, recommendations and opinions reflecting the policymaking processes of SAWS. Accordingly, the information you have labeled Exhibit 1 is excepted from disclosure under section 552.111 of the Government Code and may be withheld on that basis.

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).

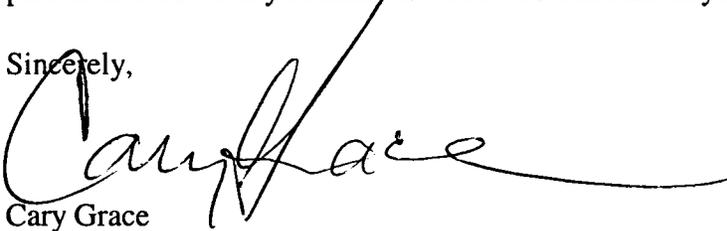
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 Dep't of Pub. 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Cary Grace
Assistant Attorney General
Open Records Division

ECG/jev

Ref: ID# 213032

Enc. Submitted documents

c: Ms. Wendy Foster
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(w/o enclosures)