



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 28, 1994

Ms. Laura S. Portwood
Senior Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR94-824

Dear Ms. Portwood:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, Government Code chapter 552. We assigned your request ID# 27991.

The City of Houston (the "city"), through its Department of Housing and Community Development, has received a request for the following information:

1. Applications or proposals prepared and/or submitted by the City of Houston to the Resolution Trust Corporation for purchase and/or proposed usage of property located at 3601 Hollister, Houston, Texas.
2. Applications or proposals submitted through the City of Houston to the Resolution Trust Corporation by any public agency, non-profit organization or for-profit entity regarding purchase and/or proposed usage of property located at 3601 Hollister, Houston, Texas.
3. All correspondence, including letters, faxes, memos, contracts and proposals between the City of Houston and any public agency, non-profit organization or for-profit entity regarding purchase and/or proposed usage of property located at 3601 Hollister, Houston, Texas.

4. Any written agreements and/or contracts between the City of Houston and the Resolution Trust Corporation regarding demolition and/or land-use restrictions for the property located at 3601 Hollister, Houston, Texas.

5. All correspondence, including letters, memos and faxes, between the City of Houston and members and/or officers of the Binglewood Civic Club regarding Springtime Estates Apartments, a property located at 3601 Hollister, Houston, Texas.

6. All correspondence, including letters, memos, inter-office memos and faxes, between the Department of Housing and Community Development and the office of Houston City Council member Helen Huey regarding property located at 3601 Hollister, Houston, Texas.

You advise us that the city has made some of the requested information available to the requestor. You object, however, to release of the remainder of the requested information, which you have submitted to us for review, and claim that sections 552.107 and 552.111 of the Government Code except it from required public disclosure.

Section 552.107(1) of the Government Code excepts information from disclosure if:

(1) it is information that . . . an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Rules of the State Bar of Texas.

Section 552.107(1) protects information that reveals client confidences to an attorney, including facts and requests for legal advice, or that reveals the attorney's legal advice. *See Open Records Decision No. 574 (1990)*. In *Open Records Decision No. 462 (1987)* this office concluded that section 552.107(1) does not except the records prepared by a law firm employed by a university to investigate the university's football program, because such records were prepared by the law firm in its capacity as the university's investigator, not its legal representative. Thus, section 552.107(1) does not permit a governmental body to make any information confidential merely by communicating it to an attorney. *Id.* By the same token, information does not fall within the protection of section 552.107(1) merely because it has been communicated to or reviewed by an attorney. *See Open Records Decision No. 574*.

You seek to withhold under section 552.107(1) a document titled "Review of Spring Branch ISD letter from Pam Akins" (Exhibit "C"). You indicate that this document represents the legal advice of the city's outside counsel concerning his recommended response to an inquiry about a proposed city project. We conclude that

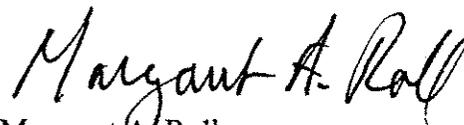
this information falls within the protection of section 552.107(a) of the Government Code and need not be made available to the requestor.¹

You also claim that section 552.111 of the Government Code excepts some of the submitted information from required public disclosure. Section 552.111 excepts from required public disclosure “[a]n interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency” This section protects from disclosure advice, opinions, and recommendations; it does not protect facts or written observations of facts. Open Records Decision No. 615 (1993) at 5. Furthermore, this section applies only to interagency and intraagency memoranda. The purpose of section 552.111 is to prevent disclosure of information that, if released, will inhibit free discussion among agency personnel as to policy issues. *See id.* at 5-6. Where a record is genuinely a preliminary draft of a document that has been released or is intended for release in a final form, the 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 (1990). Purely factual information in a preliminary draft, however, where severable from information that constitutes “advice, opinion, or recommendation,” may not be withheld under section 552.111. *Id.* at 2; *see also* Open Records Decision No. 450 (1986).

We have examined the information that you seek to withhold under section 552.111. Some of the information is purely factual and may not be withheld under section 552.111. However, one of the submitted documents, *i.e.*, the proposed request for proposals, is clearly a draft. It necessarily represents the advice, recommendations, or opinions of the drafter as to the form and content of the final document. We conclude that you may withhold this document under section 552.111 of the Government Code.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Margaret A. Roll
Assistant Attorney General
Open Government Section

¹We assume, however, that once the city responds to the inquiry, it will have waived the attorney-client privilege with respect to that response. *See* Open Records Decision No. 630 (1994) (concluding that section 552.107(1) is waivable).

MAR/GCK/rho

Ref.: ID# 27991

Enclosures: Submitted documents

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(w/o enclosures)