



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 28, 1995

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

OR95-531

Dear Ms. Portwood:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. We assigned your request an identification number, ID# 30396.

The City of Houston (the "city") has received a request for information generally pertaining to Motion No. 94-1969, which the city council adopted on October 5, 1994. You aver that the city has released much of the requested information; on behalf of the city, however, you object to the release of two documents, which you have submitted for our review. *See* Gov't Code § 552.303 (requiring governmental body that requests attorney general decision on open records request to supply to attorney general specific information requested). You contend that one of these documents, a memorandum from the city's legal department, is excepted from required public disclosure pursuant to section 552.107 of the Government Code and that the other, an interoffice memorandum, is excepted from required public disclosure pursuant to section 552.111 of the Government Code.¹

¹In your initial letter to this office, dated November 11, 1994, you claimed that section 552.108 of the Government Code excepted some of the requested documents from required public disclosure. On the documents submitted for our review, however, you did not indicate that section 552.108 applied to either. Accordingly, we do not consider the applicability of section 552.108 in this situation.

Section 552.107(1) excepts from required public disclosure "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."² This office examined the scope of the attorney-client privilege, as it was incorporated into the statutory predecessor to section 552.107(1), in Open Records Decision No. 574 (1990). In Open Records Decision No. 574 (1990), this office concluded that, for purposes of the Open Records Act, the statutory predecessor to section 552.107(1) protected only material considered privileged under rule 1.05 of the Texas State Bar Disciplinary Rules of Professional Conduct; it did not extend to material considered unprivileged client information under rule 1.05. Open Records Decision No. 574 (1990) at 5.

Thus, the statutory predecessor to section 552.107(1) excepted from required public disclosure only factual information or requests for legal advice communicated by the client to the attorney, as well as legal advice or opinion the attorney renders to the client or to an associated attorney in furtherance of the rendition of legal services to the client. *Id.* at 3, 5. The statutory predecessor to section 552.107(1) did not except basically factual communications from attorney to client or between attorneys representing the client that do not reveal client confidences. *Id.*

We have examined the document you claim section 552.107(a) excepts from required public disclosure. Much of the document consists of legal advice or opinion from the city attorney to a city council member. The city may withhold this portion of the document. A small portion, however, does not contain legal advice or opinion, nor does it appear to reflect factual information the client conveyed to the attorney. The city must release this information to the requestor. For your convenience, we have marked the information the city must release.

Section 552.111 of the Government Code, which you claim excepts a portion of the second document you have submitted for our review, authorizes a governmental body to withhold 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." In Open Records Decision No. 615 (1993) this office construed the statutory predecessor to section 552.111 as follows:

We conclude that section [552.111] excepts from disclosure only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the deliberative or policymaking processes of the governmental body at issue. Section [552.111] does not except from disclosure purely factual information that is severable from the opinion portions of

²Section 552.107(2) of the Government Code excepts from required public disclosure information, the release of which is precluded by court order. We do not understand you to raise this subsection of section 552.107.

internal memoranda. . . . [W]e stress that . . . to come within the [section 552.111] exception, information must be related to the *policymaking* functions of the governmental body. An agency's policymaking functions do not encompass routine internal administrative and 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 (1993) at 5 (footnote deleted).

You have marked a portion of the document that you believe section 552.111 exempts. Upon review, we find that the marked portion consists of advice, opinion, or recommendation related to the city's policymaking functions. We accordingly conclude the city may withhold from disclosure that portion of the document for which you have claimed section 552.111.

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 of the Government Code regarding any other records. If you have questions about this ruling, please contact this office.

Yours very truly,



Kymerly K. Oltrogge
Assistant Attorney General
Open Government Section

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Ref.: ID# 30396

Enclosures: Marked documents

cc: Mr. David Kahne
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(w/o enclosures)