



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 24, 1995

Mr. Todd Jermstad
Assistant General Counsel
Texas Department of Criminal Justice
Legal Affairs Division
P.O. Box 99
Huntsville, Texas 77342-0099

OR95-692

Dear Mr. Jermstad:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 34155.

The Texas Department of Criminal Justice (the "department") received a request for records "detailing all aspects of the construction, lease and/or purchase of the Baker Street Facility in Houston, Texas." You state that the department has deemed most of the requested information to be public. However, you claim that two items that are responsive to the request are excepted from disclosure; one under section 552.108(a) and the other under sections 552.107 and 552.111 of the Government Code. You have submitted those items to this office for review. We have considered the exceptions you claimed and have reviewed the documents at issue.

Section 552.108(a) excepts from disclosure:

(a) A record of a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime

When applying section 552.108, this office distinguishes between cases that are still under active investigation and those that are closed. Open Records Decision No. 611 (1992) at 2. In cases that are still under active investigation, section 552.108 excepts from disclosure all information except that generally found on the first page of the offense report. *See generally Houston Chronicle Publishing Co. v. City of Houston*, 531

S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). Once a case is closed, information may be withheld under section 552.108 only if its release "will unduly interfere with law enforcement or crime prevention." See *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Attorney General Opinion MW-446 (1982); Open Records Decision Nos. 444 (1986), 434 (1986).

You inform us that Mr. Chuck Noll of the Harris County District Attorney's office has determined that the document you have submitted as Exhibit "A", a memorandum from the Harris County District Attorney's office, is part of an on-going criminal investigation. It does not contain information that would typically appear on the first page of an offense report. Therefore, we conclude that the department may withhold the memorandum under section 552.108(a).

Section 552.107 excepts information if:

- (1) 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 Rules of the State Bar of Texas

You claim that the documents you have submitted as Exhibit "B" are excepted from disclosure because such a disclosure would infringe upon the attorney-client privilege and because the documents are attorney work product. 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. *Id.* at 5. We conclude that portions of the submitted documents in Exhibit "B" contain an attorney's legal advice or opinions and may be withheld. We have marked the documents to indicate which portions may be withheld. However, the remainder of the documents do not contain client confidences or an attorney's legal advice or opinions and may not be withheld from required public disclosure under section 552.107.

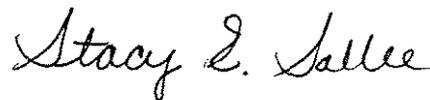
You claim that section 552.111 also excepts the documents in Exhibit "B" from required public disclosure. Section 552.111 excepts "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), 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, 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 (1993) at 5-6. In addition, section 552.111 does not except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. *Id.* at 4-5.

Section 552.111 also excepts from required public disclosure a preliminary draft of a letter or document related to policymaking matters, since drafts represent the advice, opinion, and recommendation of the drafter as to the form and content of the final document. *Id.*; *see also* Open Records Decision No. 559 (1990). The advice, opinions, and recommendations in all documents except the draft letter have been excepted under section 552.107. We have reviewed the issue discussed in the draft letter and conclude that it relates to the policymaking processes of the governmental body. We understand that the department is making the final version of the letter available to the requestor. We conclude that the underlying factual data contained in the draft letter is also contained in the final version. Therefore, the draft letter may be withheld from disclosure.

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 should 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,



Stacy E. Sallee
Assistant Attorney General
Open Government Section

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Ref.: ID# 34155

Enclosures: Marked documents

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