



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

August 22, 1995

Ms. Stacy C. Ferguson  
Schulman, Walheim, Heidelberg & Acevedo, Inc.  
745 East Mulberry, Suite 700  
San Antonio, Texas 78212

OR95-789

Dear Ms. Ferguson:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code.<sup>1</sup> Your request was assigned ID# 31268.

The San Antonio Independent School District (the "district") received a request for 13 categories of documents relating to the district's sponsorship of the Center for Health Care Services (the "center"), a community center in San Antonio. You claim that a portion of the requested information is excepted from disclosure under sections 552.101, 552.107(1), and 552.111 of the Government Code.<sup>2</sup> We have considered the exceptions you claimed and have reviewed the documents at issue.<sup>3</sup>

---

<sup>1</sup>The Seventy-fourth Legislature has significantly amended the Open Records Act effective September 1, 1995. See Act of May 29, 1995, H.B. 1718, 74th Leg., R.S. (to be codified at Gov't Code ch. 552) (copy available from House Document Distribution). We do not address in this ruling whether these recent amendments to the Open Records Act will affect requests for this information that are made on or after September 1, 1995.

<sup>2</sup>In your letter, you state that the district intends to make documents in your possession that are responsive to requests 1, 2, 3, 4, 5, 7, 8, and 9 available to the requestor, with the exception of the documents submitted to this office. You further state that you have no documents in your possession that are responsive to requests 10-13. The Open Records Act does not require a governmental body to disclose information that did not exist at the time the request was received. Open Records Decision No. 452 (1986) at 3. Therefore, the district need not produce any documents in response to requests 10-13. You have omitted request no. 6 from your list. The documents that the district submitted to this office do not appear to be responsive to request no. 6. Consequently, we assume that the district will produce to the requestor documents responsive to request no. 6.

<sup>3</sup>You have also submitted a document labeled as Exhibit "C." In your letter, you state that it is a copy of the original request for information. However, it is not the original document. As you make no argument concerning this document, we do not address whether any of the exceptions the district has claimed apply to this document.

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 Exhibits "A" and "B" are excepted from disclosure because Rule 1.05(a)(1) of the Texas State Bar Disciplinary Rules of Professional Conduct prevents disclosing a client's "confidential" information. Rule 1.05(a) defines "confidential information" to include both "privileged information" protected under rule 503 of the Texas civil rules of evidence and "unprivileged information," which includes all other client information held by a lawyer. 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.

Exhibit "A" consists of documents exchanged between counsel for the district and counsel for the center. You have not shown that there is any attorney-client relationship between the center's attorneys and the district or that there any communication between you and the center's attorney is otherwise privileged. Therefore, we conclude that section 552.107 does not except the information contained in Exhibit "A" from required public disclosure.

Exhibit "B" consists of documents evidencing and relating to communications between you and the district's superintendent and district board members. The section 552.107 exception applies only to legal advice, opinion, and client confidences. Basically factual communications from attorney to client are not protected. Open Records Decision No. 574 (1990) at 3. After reviewing the documents in Exhibit "B," we conclude that certain of the documents contain legal advice, opinion, and client confidences and may be withheld. However, the documents also contain factual information that must be disclosed. We have marked the documents to indicate what information may be withheld under section 552.107.<sup>4</sup>

You have also claimed that section 552.111 excepts the information contained in Exhibits "A" and "B" from 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

---

<sup>4</sup>You have claimed that section 552.101 excepts the submitted information from disclosure to the same extent as does section 552.107. In previous decisions, this office has held that the attorney-client privilege is more specifically covered under section 552.107 than under section 552.101. Open Records Decision No. 574 (1990) at 2. As we have addressed the district's section 552.107 claim, we do not address the section 552.101 claim.

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. *Id.* 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 534.001 of the Health and Safety Code permits the establishment of a community center by a county, municipality, hospital district, school district, or any organizational combination of two or more of these local agencies. A community center is intended to "be a vital component in a continuum of services for persons in this state who are mentally ill or mentally retarded." Health & Safety Code § 534.0015(a). The district provides many in-kind services to the center, including instructional materials and counseling services. Therefore, we conclude that these documents relate to the policy mission of the district. They also fall within section 552.111 because they are communications between two government bodies. However, after reviewing the documents in Exhibit "A," we conclude that most of them contain purely factual information. Moreover, many of the submitted documents are public information, namely, documents that relate to the receipt or expenditure of public funds by a governmental body, a notice that was apparently publicly posted, a resolution involving policies and procedures of a mental health facilities' board of trustees, and a statute. *See* Gov't Code § 552.022(3), (9), (10); Open Records Decision No. 551 (1990) at 2-3 ("The law, binding upon every citizen, is free for publication to all."). However, we do find that four of the documents contain advice, recommendations, or opinions that relate to the policymaking processes of the district and center. We have marked the portions of those documents that the district may withhold. However, the district may not withhold the remainder of those documents and the other documents in Exhibit "A."

As is discussed above, purely factual information is not excepted under section 552.111. Therefore, the district must disclose the facts contained in the documents in Exhibit "B."<sup>5</sup> 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. Open Records Decision No. 559 (1990). We find that there is one draft document in Exhibit "B" that relates to the policymaking processes of the governmental body. Therefore, that document may be withheld from disclosure. We have marked that document for your convenience. The remainder of the documents in Exhibit "B" are excepted under section 552.107 so we need not discuss the application of section 552.111 to that same information.

---

<sup>5</sup>This is the same factual information that we concluded may not be withheld under section 552.107 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 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

SES/LRD/rho

Ref.: ID# 31268

Enclosures: Marked documents

cc: Mr. Geoffrey N. Courtney  
Special Projects Attorney  
Advocacy, Incorporated  
7800 Shoal Creek Boulevard, Suite 171-E  
Austin, Texas 78757-1024  
(w/o enclosures)