



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 28, 1995

Mr. Ramon Dasch
Superfund Coordinator
Texas Natural Resource
Conservation Commission
P.O. Box 13087
Austin, Texas 78711-3087

OR95-868

Dear Mr. Dasch:

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# 33819.

The Texas Natural Resource Conservation Commission (the "commission") received a request for "all documents" concerning several sites. You claim that a portion of the requested information is excepted from disclosure under sections 552.101 and 552.111 of the Government Code. You also claim that the commission does not have ownership of the requested information under section 552.021 of the Government Code because the documents are being prepared for the Environmental Protection Agency ("EPA"). You therefore argue that this request should be directed to the EPA.

Information is "public information," that is, subject to the Open Records Act if, under a law or ordinance or in connection with the transaction of official business it is "collected, assembled or maintained" by a governmental body. Gov't Code § 552.021(a)(1). It is clear from the documents submitted to this office for review that the commission is collecting this information. Although the information may eventually be submitted to the EPA, it is currently being collected or assembled by the commission. Consequently, the submitted information is subject to the Open Records Act.¹

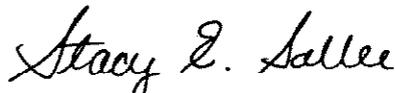
¹We note that you suggest the information may be confidential under federal law. However, none of the provisions you cite are applicable to the requested information.

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. 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). You inform us that the draft documents will be put into final form and will be available to the public.² We have reviewed the draft documents at issue and conclude that they relate to the policymaking processes of the governmental body. Therefore, with the exceptions noted in this ruling, the draft documents may be withheld from disclosure.

We note that the submitted draft documents contain pleadings that were previously filed. Pleadings that have been filed are a matter of public record and may not now be withheld. Therefore, the commission may not withhold the filed pleadings.³ Additionally, section 552.111 is waived by the release of information to the public. See Open Records Decision No. 435 (1986). If the commission has previously released any of the documents contained in these draft reports, the commission may not now withhold those documents.⁴

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

²In fact, after the commission submitted this request, you informed us that one of the draft documents, the Hazardous Ranking Package, was finalized and is now available to the public. You indicate that you either have provided or will provide to the requestor a copy of this final document.

³We note that there are other pleadings contained in these draft documents that do not appear to have been filed. The commission may withhold pleadings that were not filed and thus did not become part of the public record.

⁴You also claim that a portion of the requested information is excepted from disclosure under section 552.101 of the Government Code. We conclude that the information not excepted by section 552.111 is also not excepted by statute, judicial decision, or the constitution.

SES/RHS/rho

Ref: ID# 33819

Enclosures: Submitted documents

cc: Mr. or Ms. Kelly D. Brown
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(w/o enclosures)