



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 11, 1995

Ms. Lan P. Nguyen
Assistant City Attorney
City of Houston
Legal Department
P.O. Box 1562
Houston, Texas 77251-1562

OR95-930

Dear Ms. Nguyen:

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# 32729.

The City of Houston (the "city") received open records requests from two individuals for records pertaining to proposed tax abatements within the city. You state that you have released some of the requested information to the requestors. You seek to withhold certain other records pursuant to sections 552.101, 552.106, 552.107(1), and 552.111 of the Government Code.

You first contend that drafts of city ordinances, some of which include copies of contracts that are incorporated by reference, are excepted from public disclosure by section 552.106. We agree. Section 552.106 protects drafts and working papers involved in the preparation of proposed legislation. The purpose of the exception is similar to that of section 552.111: to encourage frank discussion on policy matters between the subordinates or advisors of a legislative body and the legislative body; it protects the internal "deliberative" or policy-making processes of a governmental body. Open Records Decision No. 460 (1987). Section 552.106 does not except purely factual material; rather, it excepts only policy judgments, recommendations, and proposals involved in the preparation of proposed legislation. *Id.* We have reviewed the contents of "Exhibit 3" and conclude that these records may be withheld in their entirety pursuant to section 552.106.¹

¹We note that some of proposed revisions of the draft ordinances were prepared by individuals other than city officials. Section 552.106 applies only to drafts and working papers prepared by persons

You next contend that the attorney-client privilege, as incorporated into section 552.107(1) of the Government Code, protects the records, or portions thereof, contained in "Exhibit 4," which consists of inter-office memoranda from, to, and within the city's legal department. In instances where an attorney represents a governmental entity, the attorney-client privilege protects only an attorney's legal advice and confidential attorney-client communications. *See* Open Records Decision No. 574 (1990). *Id.* You also contend that section 552.111 protects some of these documents.

We agree that the portions of the documents contained in "Exhibit 4" that you have specifically marked as coming within the protection of section 552.107(1) may be withheld; however, the remaining portions of these documents must be released. Similarly, we agree that you may withhold much of the information you have marked as excepted under 552.111. However, one of the documents contains factual information as well as advice, opinion, and recommendations. *See generally*, Open Records Decision No. 615 (1993). We have marked the portions of the document that you may withhold under 552.111. The city must release all remaining information in "Exhibit 4."

Finally, we address your claims regarding the applicability of section 552.101 of the Government Code to the contents of "Exhibit 5." Section 552.101 protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You describe the contents of "Exhibit 5" as "documents pertaining to applications or pending requests for tax abatement with the city for which a tax abatement agreement is not executed" and contend that these documents are deemed confidential under section 312.003 of the Tax Code. Section 312.003, entitled "Confidentiality of Proprietary Information," provides:

Information that is provided to a taxing unit in connection with an application or request for tax abatement under [the Property Redevelopment and Tax Abatement Act] and that describes the specific processes or business activities to be conducted or the equipment of other property to be located on the property for which tax abatement is sought is confidential and not subject to public disclosure until the tax abatement agreement is executed. That information in the custody of a taxing unit after the agreement is executed is not confidential under this section.

(Footnote continued)

with some official responsibility to prepare them for the legislative body. Open Records Decision No. 460 (1987). We assume for purposes of this ruling that the private citizens were acting under authority of the city when they submitted their comments. If they were not, section 552.106 would not apply to those individuals' recommendations.

Section 312.003 makes confidential only "information . . . that describes the specific processes or business activities to be conducted or the equipment of other property to be located on the property." Thus we do not construe section 312.003 to protect from public disclosure all records pertaining to applications or pending requests for tax abatements, but rather only those portions of the records that implicate the businesses' proprietary interests. We have marked the portions of documents pertaining to one business's application for a tax abatement as indicative of information contained in other documents that the city must withhold pursuant to section 312.003.² Because you have raised no other exceptions to required public disclosure with regard to the contents of "Exhibit 5," all remaining information in these documents must be released.

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,



Loretta R. DeHay
Assistant Attorney General
Open Government Section

LRD/RWP/rho

Ref.: ID# 32729

Enclosures: Marked documents

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²We assume for purposes of this ruling that none of the records before us pertain to requests for tax abatements that have resulted in tax abatement agreements that have been executed since the time of your request for an open records decision.