Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 27, 1995

Ms. Raenell Silcox
Attorney
Resource Protection Division
Texas Parks and Wildlife Department
4200 Smith School Road
Austin, Texas 78744

OR95-998

Dear Ms. Silcox:

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# 34697.

The Texas Parks and Wildlife Department (the "department") received a request for approximately 11 categories of documents relating to the Endangered Species Act "takings" in Bastrop County and Bastrop State Park, Texas, and sixty categories of documents relating to the project expansion of the Lost Pines Golf Course in Bastrop State Park and a October 27, 1994, letter to Ms. Ann Mesrobian. You claim that a portion of the requested information is excepted from disclosure under sections 552.101, 552.103, 552.107, and 552.111 of the Government Code. You have submitted samples of the documents for which you claim an exception. We have considered the exceptions you claimed and have reviewed the sample documents.[1]

[1]We note that the requestor has asked to be put on a distribution list for "future mailings of related information that may be releasable to the public pursuant to the Texas Open Records Act." This office has previously ruled that a governmental body need not honor a "standing request." A "standing request" refers to a request to provide information "on a periodic basis," *see* Open Records Decision No. 465 (1987); a weekly basis, *see* Open Records Decision No. 476 (1987); or to provide information that has not yet been recorded, *see* Open Records Decision No. 452 (1986). The request is a standing request, as it seeks information on a daily and weekly basis. Therefore, the department is not obliged to comply with the request to provide information in the future.

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. While some of the documents pertain to the department's policy functions, some of the information contained in these documents is purely factual. Also, some the requested information relates to a personnel or internal administrative matter. Section 552.111 does not except that information from required public disclosure. We have marked those portions of the documents that may be withheld from required public disclosure under section 552.111. The remaining information in these documents may not be withheld.

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 state that the final versions of the draft documents either have been or will be released. We have reviewed the draft documents at issue and conclude that they relate to the policymaking processes of the governmental body. Therefore, the draft documents may be withheld from disclosure.[2]

We note that one document was sent to the Bastrop Advertiser. Section 552.111 is waived by the release of information to the public. *See* Open Records Decision No. 435 (1986). Therefore, the department may not withhold that document.

In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

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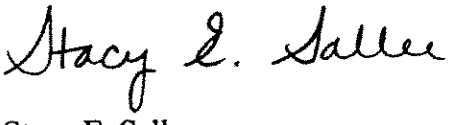
[2]You did not explain how any claimed exception other than section 552.111 applies to the requested documents. A governmental body has the burden of establishing how a claimed exception applies to specific documents. Gov't Code § 552.301(b). As you have not explained how sections 552.103 and 552.107 apply to the submitted documents, these exceptions are waived. Additionally, we do not find that section 552.101 applies to the submitted documents, as they are not excepted from disclosure by a statute, constitution, or judicial decision.

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 Records Division

SES/rho

Ref.: ID# 34697

Enclosures: Marked documents

cc: Mr. Ellis Gilleland
P.O. Box 9001
Austin, Texas 78766
(w/o enclosures)