



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 13, 1995

Ms. Christine T. Rodriguez
Staff Attorney
Legal and Compliance, MC110-1A
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR95-1215

Dear Ms. Rodriguez:

You ask whether certain information is subject to required public disclosure pursuant to chapter 552 of the Government Code. Your request was assigned ID# 23545.

The Texas Department of Insurance (the "department") received an open records request for information relating to Metropolitan Life Insurance Company ("Metropolitan"). You have submitted for our review three exhibits, designated as A, B, and C, containing representative samples of documents that you claim are excepted from disclosure pursuant to sections 552.103, 552.107, and 552.111.¹

In your letter to this office, you contend that the information in exhibit A is excepted from disclosure by section 552.103 of the Government Code, commonly referred to as the litigation exception. To secure the protection of section 552.103, a governmental body must demonstrate that the requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 588 (1991). In a subsequent telephone conversation to this office, you inform us that you no longer anticipate litigation nor is litigation pending in this instance. We assume that you have released the information submitted to us as exhibit A.

¹In 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) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). 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.

You contend that the information in exhibit B is excepted from required disclosure pursuant to section 552.107 of the Government Code, commonly referred to as the attorney-client communication exception. Only certain types of documents are excepted from disclosure pursuant to section 552.107. Section 552.107 protects communications within the attorney-client privilege from disclosure under chapter 552 of the Government Code. *See* Open Records Decision No. 574 (1990). For the purposes of chapter 552 of the Government Code, this privilege encompasses information that reveals client communications to the attorney regarding the subject matter of the representation and attorney communications of legal advice and opinion to the client. *Id.* at 6. A basically factual communication from the attorney to the client or between attorneys representing the client is not protected. *Id.* at 3. We have examined the documents submitted as exhibit B and conclude that portions of these documents are excepted from disclosure by section 552.107. However, you have not established that the remaining information is either a confidential communication from the client to the attorney or the advice or opinion of the attorney given to the client, thus, you may not withhold such information from the requestor. We have marked the documents to reflect the portions of information in exhibit B that you may withhold pursuant to section 552.107 and the portions of the information that you must release to the requestor.

Finally, you contend that the information contained in exhibit C is excepted from required disclosure pursuant to section 552.111 of the Government Code, commonly referred to as the agency memorandum exception. You contend that the information in exhibit C is protected by section 552.111 since it consists of attorney work product and party communications.

Section 552.111 excepts from public disclosure an "interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." The proper scope and interpretation of this section were addressed by this office in Open Records Decision No. 615 (1993) in light of the holding in *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W2d 408 (Tex. App.--Austin 1992, no writ). For information to be excepted from required disclosure pursuant to section 552.111, it must relate to the policymaking functions of the governmental body. Open Records Decision No. 615 (1993). An agency's policymaking functions do not encompass routine internal administrative and personnel matters. *Id.* A few of the documents submitted for our review as exhibit C are related to the deliberative policymaking functions of the department and they are excepted from required disclosure pursuant to section 552.111. However, most of the information in the documents submitted as exhibit C is not related to the deliberative policymaking process of the department and, therefore, that information must be released to the requestor since it is not within the protection of section 552.111. We have marked the documents to reflect the portions of the documents that you may withhold pursuant to section 552.111 and the portions of the documents that you must release to the requestor.²

²We do not address the department's reliance on the attorney work product exception or party communications which the department did not properly raise in its request for an opinion. In Open

We are resolving this matter with this 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 may 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,



Kathryn P. Baffes
Assistant Attorney General
Open Records Division

KPB/rho

Ref: ID# 23545

Enclosures: Marked documents

cc: Mr. Ron Parry
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(w/o enclosures)

Records Decision No. 574 (1990), this office ruled that the work product exception came under the litigation exception, section 552.103, rather than section 552.111. *See also*, Open Records Decision No. 575 (1990), 429 (1985). The department did not assert section 552.103 as an exception for the information submitted in exhibit C, thus, it waived this exception.