



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 18, 1996

Ms. Tracy B. Calabrese
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR96-1170

Dear Ms. Calabrese:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your requests were assigned ID# 40242, ID# 40667, and ID# 100113.

The City of Houston (the "city") received several requests for the annexation report that Patricia D. Knudson & Associates (the "Knudson report") prepared for the city and other information relating to the city's consideration of potential annexation candidates. The city has released some of the requested information to the requestors. However, you believe that the Knudson report and internal memoranda that identify and analyze areas for possible annexation are excepted from disclosure under sections 552.107 and 552.111 of the Government Code. You seek to withhold only information relating to areas that the city has not annexed, but may annex in the future. You have submitted to this office for review copies of the documents that the city wishes to withhold from disclosure.

Section 552.107 excepts information from disclosure if:

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 Texas Rules of Civil Evidence, the Texas Rules of Criminal Evidence, or the Texas Disciplinary Rules of Professional Conduct.

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. Open Records Decision No. 574 (1990) at 5. However, section 552.107(1) does not protect purely factual information unless the factual information constitutes a confidence that the client related to the attorney. See *id.* at 5. The documents at issue contain both attorneys' legal advice and opinion and client confidences that are excepted from disclosure under section 552.107. However, the documents also contain factual information that is not excepted from disclosure under section 552.107. We have marked those portions of the documents that the city may withhold from required public disclosure pursuant to section 552.107.

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 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. We have marked the portions of the documents at issue that consist of advice, recommendations, and opinions reflecting the policymaking processes of the city. The city may withhold these marked portions pursuant to section 552.111.¹

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 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

¹We note that the documents submitted to this office contain some information that the city has apparently released to the public. The Open Records Act prohibits the city from now withholding from disclosure any of the information at issue here that it has previously released. Gov't Code § 552.007.

Ref.: ID# 40242, ID# 40667, ID# 100113

Enclosures: Marked documents

cc: Mr. Ross J. Radcliffe
Johnson, Radcliffe & Petrov, L.L.P.
450 Gears Road, Suite 700
Houston, Texas 77067
(w/o enclosures)

Mr. Keith P. Ellison
Attorney at Law
1100 Louisiana, Suite 4600
Houston, Texas 77002-5281
(w/o enclosures)

Ms. Paige Cessnun
P.O. Box 834
Tomball, Texas 77377
(w/o enclosures)

Mr. Curtis Jay Cook
President
Ponderosa Volunteer Fire Association, Inc.
P.O. Box 90674
Houston, Texas 77290-0674
(w/o enclosures)