



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 24, 1997

Mr. James G. Nolan
Texas Workforce Commission
101 E. 15th Street
Austin, Texas 78748

OR97-0418

Dear Mr. Nolan:

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# 103953.

The Texas Workforce Commission (the "commission") received an open records request for copies of proposed legislation the commission members approved for submission to the legislature. Because the requested records constitute drafts of proposed legislation, you seek to withhold these records from the public pursuant to section 552.111 of the Government Code.¹

Section 552.111 of the Government Code exempts interagency and intra-agency memoranda and letters, but only to the extent that they contain advice, opinion, or recommendation intended for use in the entity's policymaking process. Open Records Decision No. 615 (1993) at 5. The purpose of this section is "to protect from public disclosure advice and opinions *on policy matters* and to encourage frank and open discussion within the agency in connection with its decision-making processes." *Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.--San Antonio 1982, writ ref'd n.r.e.) (emphasis added). In Open Records Decision No. 615 (1993) at 5, this office held that

to come within the [section 552.111] exception, information must be related to the *policymaking* functions of the governmental body. An agency's policymaking functions do not encompass routine internal administrative and personnel matters . . . [Emphasis in original.]

¹You also contend the requested information is exempted from required public disclosure by section 552.106 of the Government Code. You did not, however, raise this particular exception within ten days of the commission's receipt of the open records request. See Gov't Code § 552.301(a). We therefore do not consider the applicability of this exception. See also Open Records Decision No. 515 (1988) at 6.

This office has previously determined that drafts of documents *intended for release* may be withheld under 552.111, Open Records Decision No. 559 (1990), and certainly, the drafts of the proposed legislation, which relate to the commission's policy-making function, would become public information once filed. We therefore conclude generally that drafts of legislation may be excepted from required public disclosure by section 552.111.

This does not, however, end our discussion of whether the commission may withhold the draft documents at issue. It appears from the records before us that the commission discussed each piece of the proposed legislation during a public meeting. Attached to the open records request received by the commission is a document entitled "TWC ACTION ON LEGISLATIVE SUGGESTIONS -- OCTOBER 29 AND NOVEMBER 5, 1996." This document outlines the "area" of each proposed enactment, a description of the change in law the proposed legislation would affect, and, most importantly, a record of the "Commission Action" on each proposal, e.g., "approve," "pursue further," or "approve with amendment." Because the commission took "action" on each piece of the proposed legislation, we assume that such "action" took place during a publicly held meeting pursuant to the Texas Open Meetings Act, Gov't Code ch. 551, and that each item was publicly discussed. Given that assumption, we must conclude that to the extent that the commission members revealed the substance of the proposed legislation before the public, there would be no rationale for withholding those proposals from the public at this time. Such discussion constitutes the commission's waiver of the protection of section 552.111. *Cf.* Open Records Decision No. 137 (1976) at 5 and authorities cited therein (when agency chooses to adopt or incorporate by reference intra-agency memorandum in explaining in public basis of decision made, exception is waived and information to which it referred must be made public).

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,


Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/RWP/ch

Ref.: ID# 103953

Enclosures: Submitted documents

cc: Mr. Bruce Bower
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(w/o enclosures)

