



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 3, 1997

Mr. Sam A. Lindsay
City Attorney
City of Dallas
City Hall
Dallas, Texas 75201

OR97-0685

Dear Mr. Lindsay:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 104143.

The City of Dallas (the "city") received a request for "[d]ocuments, letters, memos and other material pertaining to Mayor Ron Kirk's alleged conflict of interest on arena-related matters, including but not limited to your recent communication to Mr. Kirk - to which both you and Mr. Kirk have referred in interviews with me - on this matter" and "[c]ommunications with the Texas Ethics Commission, including documents, letters, memos, rulings and other material, pertaining to Mayor Kirk's alleged conflict of interest on arena-related matters." The city received a second request for "the opinion written by Dallas City Attorney Sam Lindsay in December 1996, clearing Dallas Mayor Ron Kirk of any conflict of interest barring him from lobbying the Texas State Legislature for funds for a new sports arena in Dallas" and for "[a]ny correspondence between the city attorney and the mayor concerning the salary paid to the mayor by the Dallas law firm of Gardere & Wynne, where he is a partner." You state that the city has no documents responsive to the request for information concerning the mayor's salary at Gardere & Wynne. You assert that records you submitted to this office labeled as Exhibits B, C, D, and E are excepted from required public disclosure based on Government Code sections 552.101, 552.107(1), 552.109 and 552.111.

We begin with Exhibit B, a legal memorandum to Mr. Ron Kirk, dated April 23, 1995, from his private attorney. You assert that this legal memorandum is protected from public disclosure by section 552.101 of the Government Code in conjunction with the Texas Disciplinary Rules of Professional Conduct and by section 552.109 of the Government Code.

You also raise section 552.305¹ in regard to Exhibit B, stating "the Mayor's private attorney . . . has the obligation to preserve the Mayor's privileges therein;"

We will consider whether the city must withhold Exhibit B from disclosure as a privileged attorney-client communication. Section 552.107(1) essentially incorporates the attorney-client privilege, but only as to a government attorney:

Information is excepted from [required public disclosure] if:

(1) 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;

Gov't Code § 552.107(1). We conclude that Mr. Kirk's sharing of the memorandum with the city attorney was a privileged communication. Accordingly, the city may withhold Exhibit B from the requestor pursuant to section 552.107(1).

You have marked portions of Exhibit C, a memoranda from you to Mayor Ronald Kirk dated November 1, 1996, as protected from public disclosure by Government Code section 552.107(1). Section 552.107(1) applies to a government attorney's communication of legal advice or opinion to the client, and to client confidences. We agree that section 552.107(1) excepts from public disclosure the portions of Exhibit C that you marked as covered by section 552.107(1).

You have marked other portions of Exhibits C and D as covered by sections 552.101 and 552.305. You also assert that the release of Exhibit E would implicate third party privacy rights. In regard to ID# 102873, another open records request for information pertaining to the proposed new sports arena, this office provided Dallas Basketball Limited ("DBL") an opportunity to assert any privacy or property rights in may have in the information that was the subject of that request. The DBL information in ID# 102873 is essentially the same DBL information here. DBL asserted no exception to the public disclosure of the information in regard to ID# 102873. *See* Open Records Letter No. 97-0145 (1997). Thus, in accordance with Open Records Letter No. 97-0145 (1997), the city may not withhold from the requestor the DBL information.

You assert that section 552.111 excepts from disclosure the legal memoranda in Exhibit D. Section 552.111 of the Government Code excepts from required public disclosure:

¹Section 552.305 of the Government Code permits a governmental body to decline to release requested information that involves the privacy or property interest of a third party.

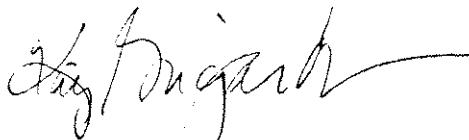
An interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency.

This exception applies to a governmental body's internal communications consisting of advice, recommendations, or opinions reflecting the policy making process of the governmental body at issue. *See* Open Records Decision No. 615 (1993). This exception does not except from disclosure purely factual information that is severable from the opinion portions of the communication. *See id.* The exception also protects preliminary drafts of a document and any comments or other notations on the drafts because they necessarily represent the advice, opinion, and recommendation of the drafter as to the form and content of the final document. *See* Open Records Decision No. 559 (1990). You state that the legal memoranda in Exhibit D are preliminary drafts of the Exhibit C memorandum. As the subject of these memoranda is the the conflict of interest question relating to the mayor's participation in the deliberations regarding the proposed downtown sports arena, we believe they concern the city's policy making functions. We conclude the city may withhold from public disclosure the legal memoranda in Exhibit D based on section 552.111.

You ask that we clarify a portion of Open Records Letter No. 97-0145 (1997), in which this office ruled that the city may withhold from disclosure portions of one of the memorandum in Exhibit D, the August 2, 1996, memorandum from you to the mayor. When the memorandum was first submitted to this office, the city claimed that section 552.107(1) excepted the memorandum in its entirety. In Open Records Letter No. 97-0145 (1997), this office assumed that the city did not wish to claim that the memorandum is excepted in its entirety under section 552.107(1), since the city had asserted that section 552.107(1) applied to only certain marked portions when the city submitted the memorandum to this office for this request. You now state that this memorandum was "erroneously" included in the exhibits for this request and that its inclusion in Exhibit D for this request was not a modification of the city's position in the earlier request. As we based our conclusion in Open Records Letter No. 97-0145 (1997) on an erroneous assumption, we clarify that letter by stating that the city may withhold from disclosure the August 2, 1996, memorandum in its entirety.

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

Yours very truly,



Kay Guajardo
Assistant Attorney General
Open Records Division

KHG/rho

Ref.: ID# 104143

Enclosures: Submitted documents

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