



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 7, 1997

Mr. Doug Young
Scanlon, Buckle & Young, P.C.
602 West 11th Street
Austin, Texas 78701-2099

OR97-1050

Dear Mr. Young:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 106203.

The City of Lakeway (the "city") received several requests for information about action taken by the city council, including copies of minutes and tapes from meetings. It is our understanding that the request notices of public hearings, tape recordings and minutes of public hearings, and any applicable ordinances have already been disclosed to the requestors. See Attorney General Opinion JM-1143 (1990) (tape recordings of public meetings are public); Open Records Decision No. 221 (1979) (minutes of public meetings are public). You submitted to this office for review various other documents that you contend are excepted from disclosure pursuant to sections 552.103, 552.107, and 552.111 of the Government Code.

To show that section 552.103(a) is applicable, a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to the litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. You state that certain property owners, who opposed an application for a variance from the city's watershed ordinance and building code, have hired an attorney. This attorney has appeared at public meetings during the variance application process and has made comments concerning the process that has led the city to believe that litigation may be anticipated. In this situation, the prospect of litigation is too speculative for section 552.103(a) to be applicable. Open Records Decision No. 518 (1989) at 5 (governmental body must show that litigation involving a specific matter is realistically contemplated). Thus, the documents at issue may not be withheld from disclosure pursuant to section 552.103(a).

Section 552.107(1) excepts from disclosure communications that reveal client confidences or the attorney's legal opinion or advice. Open Records Decision Nos. 589 (1991) at 1, 574 (1990) at 3, 462 (1987) at 9-11. Section 552.107(1) does not except

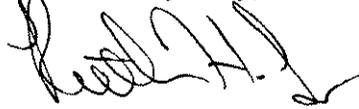
from disclosure factual recounting of events or the documentation of calls made, meetings attended, and memoranda sent. Open Records Decision No. 574 (1990) at 5. We have marked the documents from the city's attorneys that may be withheld from disclosure pursuant to section 552.107(1).

Section 552.111 excepts from disclosure inter-agency or intra-agency communications consisting of advice, recommendations, opinions, and other material reflecting the deliberative or policymaking processes of the governmental body. *See Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ); Open Records Decision No. 615 (1993) at 5. Section 552.111 does not except from disclosure purely factual information. Section 552.111 generally excepts from required public disclosure preliminary drafts of documents related to policymaking matters, since drafts represent the advice, opinion, and recommendation of the drafter as to the form and content of the final documents. *See* Open Records Decision No. 559 (1990).

The January 9, 1997 memorandum and the attachment may be withheld from disclosure in their entirety, as marked. We have also marked the February 19, 1997 fax to show the portions that may be withheld as advice, recommendation, and opinion relating to policymaking processes. Also submitted to this office for review was a copy of "draft minutes" of a public meeting, with a cover memorandum. The memorandum is not excepted from disclosure pursuant to either sections 552.107 or 552.111. As to the "draft minutes," this office in Open Records Decision No. 225 (1979) determined that the typewritten minutes of a public meeting are subject to public disclosure prior to their approval and adoption. Open Records Decision No. 225 (1979).

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,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref.: IDs# 106203

Enclosures: Marked document

cc: Mr. Toby June
101 Lakeway Drive
Austin, Texas 78734-9989
(w/o enclosures)

