



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 17, 1997

Ms. Kathryn A. Reed
General Counsel
Texas Animal Health Commission
P.O. Box 12966
Austin, Texas 78711-2966

OR97-1624

Dear Ms. Reed:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 107112.

The Texas Animal Health Commission (the "commission") received a request for records compiled by the commission's Management Review Team for its use in a commission report dated March 31, 1997. The commission submits representative samples of the records and asserts that the material is excepted from disclosure under section 552.101 and section 552.111 of the Government Code.¹

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Texas courts long have recognized the informer's privilege, *see Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); *Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928), and it is a well-established exception under the Open Records Act. *Open Records Decision No. 549* (1990) at 4. For information to come under the protection of the informer's privilege, the information must relate to a violation of a civil or criminal statute. *See Open Records Decision Nos. 515* (1988) at 2-5, 391 (1983). To the extent that the severable factual portions of the documents contain the names of the staff reporting alleged violations we note that information has not been provided which would indicate any charges have been filed arising from the results of the reviews. Consequently, you may not withhold any portion of the documents pursuant to the informer's privilege under section 552.101.

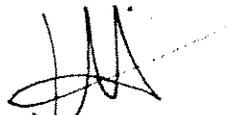
However, we now review the documents under section 552.111 which excepts from disclosure "only those internal agency communications consisting of advice,

¹In reaching our conclusion here, we assume that the "representative samples" 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). 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.

recommendations, opinions and other material reflecting the deliberative or policymaking processes of the governmental body at issue." Open Records Decision No. 615 (1993) at 5. This exception is intended to protect advice and opinions given on policy matters and to encourage frank and open discussions within an agency in connection with the agency's decision-making processes. *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 412 (Tex. App.--Austin 1992, no writ) (citing *Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.--San Antonio 1982, writ ref'd n.r.e.)). This section does not protect facts or written observations of facts. Open Records Decision No. 615 (1993) at 5. Although the information at issue concerns some internal personnel issues as well as administrative issues, the information is of such broad scope that it does impact the commission's policy mission. Open Records Decision No. 631 (1995). Also, we note that in Open Records Decision No. 559 (1990), it was observed that the predecessor statute to section 552.111 protected drafts of a document that has been or will be released in final form 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. We have marked certain information containing advice, opinion, or recommendations relating to the policy functions of the commission that you may withhold from public disclosure under section 552.111.

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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Janet I. Monteros
Assistant Attorney General
Open Records Division

JIM/glg

Ref.: ID# 107112

Enclosures: Submitted documents

cc: Ms. Sharman Eskew
Texas Animal Health Commission
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Austin, Texas 78758
(w/o enclosures)