



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 23, 1997

Mr. John A. Riley
Director
Litigation Support Division
P.O. Box 13087
Austin, Texas 78711-3087

OR97-1692

Dear Mr. Riley:

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# 107491.

The Texas Natural Resource Commission ("TNRCC") received a request for the following information:

Any documents, including e-mail messages, that constitute:

- 1) any internal communications regarding the fiscal implications or fiscal impacts of HB 1131 or CSHB 1131 (i.e. the bill by Rep. [Puente] that is pending in the current (75th) session of the Texas Legislature), and
- 2) any communications between any TNRCC employee (including commissioners) and any person not employed by the agency regarding the fiscal implications or fiscal impacts of HB 1131 or CSHB 1131.

We understand that some of the requested information has been released to the requestor. However, you state that the remaining information is excepted from required public disclosure under sections 552.106 and 552.111 of the Government Code. You have submitted for our review a representative sample of the documents that you seek to withhold.¹ We have reviewed the documents at issue and considered the exceptions you claim.

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision No. 499 (1988), 497 (1988). Here, we do not address any other requested records to the extent that those records contain substantially different types of information that that submitted to this office.

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, however, 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.

You state that the Legislative Budget Board requested that the TNRCC prepare a cost estimate for HB 1131 and CSHB 1131 to be used in the board’s fiscal note to the legislature. You also state that the documents contained in Attachment (C) relate to internal communications concerning “advice, opinion, or recommendations on the fiscal impacts of the proposed legislation” on TNRCC, prepared by the TNRCC fiscal review staff. We find that the submitted information in attachment (C) pertains to the policy functions of TNRCC. However, some of the information is purely factual. Thus, we have marked the specific portions that TNRCC may withhold from disclosure based on section 552.111.²

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,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/SAB/ch

Ref.: ID# 107491

Enclosures: Marked documents

²In light of our response regarding section 552.111, it is unnecessary to address section 552.106.

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cc: Mr. Richard Lowerre
202 West 17th Street
Austin, Texas 78701
(w/o enclosures)

