



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 14, 1997

Ms. Linda Cloud
Deputy Executive Director
Texas Lottery Commission
P.O. Box 16630
Austin, Texas 78761-6630

OR97-2284

Dear Ms. Cloud:

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# 109364.

The Texas Lottery Commission (the "commission") received a request for information which was provided to the commissioners at a July 11, 1997 meeting. The information relates to the implementation of HB 2086, enacted during the 75th Legislature. You assert that the information is excepted from disclosure pursuant to sections 552.107 and 552.111 of the Government Code. In this regard, you inform this office that the information for which you are seeking an exception was not discussed during the July 11, 1997 open meeting. We have considered your arguments and have reviewed the information submitted.

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. In addition, section 552.111 does not except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. *Id.* at 4-5.

Upon review of the information submitted to this office, we conclude that you may withhold most of the information you have marked under section 552.111. However, some of the information applies to administrative or personnel matters and thus, it may not be withheld under section 552.111. For your convenience, we have marked the information to be released.

You also raise section 552.107 for two of the items you seek to withhold. Section 552.107 excepts information from disclosure if:

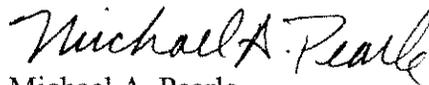
it is information that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Texas Rules of Civil Evidence, the Texas Rules of Criminal Evidence, or the Texas Disciplinary Rules of Professional Conduct.

Gov't Code § 552.107. In Open Records Decision No. 574 (1990), this office concluded that section 552.107 excepts from public disclosure only "privileged information," that is, information that reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinions; it does not apply to all client information held by a governmental body's attorney. *Id.* at 5. Section 552.107(1) does not protect purely factual information. *Id.*

We need not address your argument under section 552.107 for the first item of information you seek to withhold, item number 24 of the Bill Summary, as we find that this item may be withheld under section 552.111. For the second item, item number 29 of the Bill Summary, we find that this information is not protected by section 552.107 and must be released.

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/ch

Ref.: ID# 109364

Enclosures: Submitted documents

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