



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 14, 1997

Ms. Brenda Jenkins
Executive Director
Public Utility Commission of Texas
P.O. Box 13326
Austin, Texas 78711-3326

OR97-2293

Dear Ms. Jenkins:

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# 110488.

The Public Utility Commission (the "commission") received a request for information related to

the activities and/or involvement of the members of the Public Utility Commission of Texas and/or their staff in the development, preparation, drafting, discussion, and negotiation of any and all legislative proposals considered in the 1997 session of the State Legislature concerning the deregulation or transition to deregulation of the electric utility industry.

You claim that the requested information is excepted from disclosure under sections 552.106, 552.107, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the document which you represent is responsive to this request for information.

Section 552.111 excepts from disclosure "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 not only to a governmental body's internal memoranda, but also to memoranda prepared for a governmental body by its outside consultant. Open Records Decision Nos. 462 (1987) at 14, 298 (1981) at 2. 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. Section 552.111 does not generally except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. Open Records Decision No. 615 (1993) at 4-5.

After reviewing the document submitted, we agree that portions of it reveal the advice, recommendations, and opinions reflecting the policymaking processes of the commission, and thus may be withheld from public disclosure under section 552.111 of the Government Code. However, the document contains certain information which discloses purely factual information that is severable from the opinion portions of the document. We have marked the portion of the document at issue which must be released to the requestor.¹

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,



Vickie Prehoditch
Assistant Attorney General
Open Records Division

VDP/alg

Ref.: ID# 110488

Enclosure: Submitted/marked document

cc: Mr. Philip Chabot, Jr.
Wilkinson, Barker, Knauer & Quinn
1735 New York Ave., N.W.
Washington, D.C. 20006-5209
(w/o enclosures)

¹We note that in this instance the applicability of section 552.111 is co-extensive with that of your claimed exceptions under sections 552.106 and 552.107 of the Government Code. See Open Records Decision Nos. 574 (1990) at 5 (basically factual communications from attorney to client, or between attorneys representing client, are not protected), 429 (1985) at 5 (like section 3(a)(11), section 3(a)(6) is inapplicable to basically factual information) (construing predecessor statutes).