



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 4, 1998

Mr. Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
P.O. Box 13087
Austin, Texas 78711-3087

OR98-0340

Dear Mr. McCalla:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 112258.

The Texas Natural Resource Conservation Commission (the "commission") received a request for documents relating to the Trinity Valley Iron and Steel Company in Fort Worth, Texas. You state that you have made most of the requested documents available to the requestor. You claim, however, that one section of a report entitled, "Preliminary Assessment/Screening Site Inspection Report," is excepted from disclosure under sections 552.101 and 552.111 of the Government Code. We have considered the exception you claim and have reviewed the report at issue.

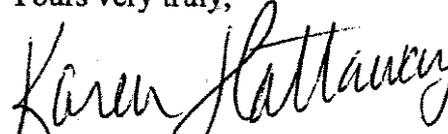
Section 552.111 excepts from disclosure "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." This exception applies to memoranda prepared for a governmental body by a consultant. Open Records Decision Nos. 462 (1987) at 14, 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, however, 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. The preliminary draft of a policymaking document that has been released or is intended for release in a final form is excepted from disclosure in its entirety under section 552.111 because such a draft necessarily represents the advice, recommendations, or

opinions of the drafter as to the form and content of the final document. Open Records Decision No. 559 (1990) at 2.

You explain that the commission prepared the report at issue in cooperation with the U.S. Environmental Protection Agency (the "EPA"). You state that the commission has forwarded the report to the EPA for review and approval, and that the marked section of the report is merely a draft that is subject to change as a result of the EPA's review. Assuming that the commission intends to release the final version of the report, we agree that section 552.111 protects from disclosure the section of the report that you have marked. Because we are able to resolve this matter under section 552.111, we need not address your section 552.101 claim.

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 any questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref: ID# 112258

Enclosures: Submitted documents

cc: Ms. Cheryl Coon Roberts
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(w/o enclosures)