



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 5, 1998

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

OR98-1851

Dear Ms. Cloud:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 117188.

The Texas Lottery Commission (the "commission") received a request for all documents concerning internal investigation case number 05-98-A01-1823. You claim that six highlighted portions of the responsive material are excepted from required public disclosure by sections 552.101, 552.107 and 552.111 of the Government Code. We have considered the exceptions you claim and have reviewed the documents at issue.

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. The internal investigation materials at issue concern administrative and personnel matters of particular employees and specific personnel issues. Consequently, we do not believe that the highlighted information is protected by section 552.111. *Garland v. Dallas Morning News*, No. 05-95-01350-CV (Tex. App.--Dallas May 13, 1998, n.w.h.) (citing *Lett v. Klein Indep. Sch. Dist.*, 917 S.W.2d 455, 457 (Tex. App.--Houston [14th Dist.] 1996), writ denied *per curiam*, 41 Tex. Sup. Ct. J. 575 (1998) (documents relating to problems with specific employee do not relate to the making of new policy but merely implement existing policy)).

You next assert that the highlighted information may be withheld under sections 552.101 and 552.107 because of the attorney-client privilege. Although you claim that section 552.101 excepts the information from disclosure, the attorney-client privilege is properly claimed under section 552.107. Open Records Decision No. 574 (1990) at 2. Section 552.107(1) excepts information that an attorney cannot disclose because of a duty to his client. 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. When communications from attorney to client do not reveal the client's communications to the attorney, section 552.107 protects them only to the extent that such communications reveal the attorney's legal opinion or advice. *Id.* at 3. In addition, basically factual communications from attorney to client, or between attorneys representing the client, are not protected. *Id.* We find that some of the highlighted information is protected by section 552.107. We have marked the information that may be withheld. *Cf.* Open Records Decision No. 462 (1987) (attorney as fact finder).

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,



Don Ballard
Assistant Attorney General
Open Records Division

JDB/nc

Ref: ID# 117188

Enclosures: Marked documents

cc: Mr. Bill Hensler
6805 Gaur Drive
Austin, Texas 78749
(w/o enclosures)