



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 24, 1998

Mr. John T. Patterson
Assistant City Attorney
City of Waco
P.O. Box 2570
Waco, Texas 76702-2570

OR98-2015

Dear Mr. Patterson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 117547.

The City of Waco (the "city") received a request for "a copy of the entire contents of the annexation notebook that was brought into the business session yesterday by Bill Falco and his staff." You state that "[m]ost of the contents of the notebook have already been released to [the requestor] for his review." You assert that the remaining contents of the notebook, documents labeled exhibits B and C, are excepted from disclosure under sections 552.106 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 from disclosure "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. 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.

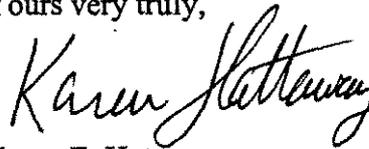
The preliminary draft of a policymaking document that has been released or is intended for release in a final form is excepted from disclosure in its entirety under section 552.111 because such a draft necessarily represents the advice, recommendations, or

opinions of the drafter as to the form and content of the final document. Open Records Decision No. 559 (1990). The draft itself, including comments, underlining, deletions, and proofreading marks, is excepted from disclosure by section 552.111. *Id.* Purely factual matter, where severable, must generally be released. *Id.* However, when such factual matter is contained in the final version of the document, the release of the final version satisfies this requirement. *Id.*

The city is preparing to annex an area known as the Highway 84 Corridor. Exhibit B contains preliminary drafts of service plans for the Highway 84 Corridor and comments on those drafts. You indicate that these drafts will be used to develop a service plan that will be attached to the annexation ordinance. Exhibit C is "a draft of possible responses to the arguments of opponents to the annexation." Exhibits B and C constitute the advice, opinion, and recommendation of city officials regarding the proposed annexation. Therefore, we conclude that the city may withhold exhibits B and C from disclosure in their entirety under section 552.111 in anticipation of releasing the documents to the public in final form.

Because we are able to resolve this matter under section 552.111, we need not address your section 552.106 argument. 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,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/mjc

Ref: ID# 117547

Enclosures: Submitted documents

cc: Mr. Richard Easley
343 Bluebonnet Circle
McGregor, Texas 76657
(w/o enclosures)