



April 30, 1999

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

OR99-1194

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# 125072.

The Texas Natural Resource Conservation Commission (the commission") received a request for commission staff evaluations of proposed legislation. You seek to withhold a portion of the information responsive to the request under sections 552.106, 552.107, and 552.111 of the Government Code.

Section 552.111 excepts interagency and intra-agency memoranda and letters, but only to the extent that they contain advice, opinion, or recommendation intended for use in the entity's policymaking process. Open Records Decision No. 615 (1993). The purpose of this section is "to protect from public disclosure advice and opinions *on policy matters* and to encourage frank and open discussion within the agency in connection with its decision-making processes." *Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.--San Antonio 1982, writ ref'd n.r.e.) (emphasis added). In Open Records Decision No. 615 at 5, this office held that

to come within the [section 552.111] exception, information must be related to the *policymaking* functions of the governmental body. An agency's policymaking functions do not encompass routine internal administrative and personnel matters . . . [Emphasis in original.]

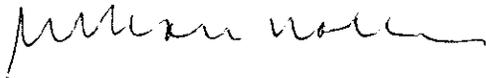
Also, section 552.111 does not protect facts and written observation of facts and events that are severable from advice, opinions, and recommendation. Open Records Decision No. 615. If, however, the factual information is so inextricably intertwined with material involving advice, opinion, or recommendation as to make separation of the factual data impractical, that information may be withheld. Open Records Decision No. 313 (1982).

You have marked the portions of the information you submitted which you seek to withhold under section 552.111. We agree that much of the material you have so marked may be withheld under that provision. However some of the information for which you claimed the protection of section 552.111 consists, in our opinion, of factual material which falls outside the scope of section 552.111. We have indicated those portions of the information which are not protected by section 552.111.

For portions of the information for which you claimed the protection of section 552.111, you also claim the protection of section 552.106(a) – which applies to drafts or working papers involved in the preparation of proposed legislation – and section 552.107(1) – which incorporates the attorney-client privilege. We do not address these claims except to note that we do not believe that any of the material which we found to be outside the scope of section 552.111 may be withheld under section 552.106 or 552.107 either. *See* Open Records Decision Nos. 460 (1987) (severable factual material not protected by section 552.106); 574 (1990) (factual information not protected by section 552.107 unless it reveals client confidences). Therefore, the material we have marked as outside the scope of section 552.111 is also outside the scope of sections 552.106 and 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.

Sincerely,



William Walker
Assistant Attorney General
Open Records Division

WMW/eaf

Ref.: ID# 125072

encl: Marked documents

cc: Mr. Richard Lowerre
Henry, Lowerre, Johnson, Hess & Frederick
4006 Speedway
Austin, Texas 78751
(w/o enclosures)