



August 2, 1999

Ms. Tina Plummer
Open Records Coordinator
Texas Department of Mental Health
and Mental Retardation
P.O. Box 12668
Austin, Texas 78711-2668

OR99-2160

Dear Ms. Plummer:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 126456.

The Texas Department of Mental Health and Mental Retardation (the "department") received a written request for the tape recording of a particular Institutional Review Board hearing. You state that the recording of the hearing has been released to the requestor. You seek to withhold, however, a short segment of the tape recording following the conclusion of the hearing pursuant to section 552.111 of the Government Code.

Section 552.111 of the Government Code protects from required public disclosure interagency and intra-agency memoranda and letters, but only to the extent that they contain advice, opinion, or recommendation intended for use in the policymaking process. Open Records Decision No. 615 at 5 (1993); *see also Austin v. City of San Antonio*, 630 S.W.2d 391 (Tex. App.--San Antonio 1982, writ ref'd n.r.e.). 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 at 5 (1993).

After reviewing the portion of the tape recording at issue, we conclude that the comments contained therein do not reflect advice, opinion, or recommendation intended for use in the department's policymaking process. Section 552.111 was not intended to protect the types of comments contained in the portion of the tape recording you seek to withhold. The department must release this information to the requestor.

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,

A handwritten signature in black ink that reads "Karen Hattaway". The signature is written in a cursive, flowing style.

Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/RWP/eaf

Ref.: ID# 126456

Encl. Tape recording

cc: Ms. Ruth C. Booth
4450 Summer Sun
San Antonio, Texas 78217
(w/o enclosure)