



September 27, 1999

Ms. Tenley A. Aldredge
Assistant County Attorney
Travis County
P.O. Box 1748
Austin, Texas 78767

OR99-2701

Dear Ms. Aldredge:

You ask whether certain information is subject to required public disclosure under the Texas Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 128064.

The Travis County Transportation and Natural Resources Department (the "department") received a written request for records pertaining to the Bergstrom Open Air Market and drainage along Jet Lane. You state that most of the requested information will be released to the requestor. You seek to withhold certain other documents, however, pursuant to sections 552.107(1) and 552.111 of the Government Code.

Section 552.107(1) protects information coming within the attorney-client privilege. *See* Open Records Decision No. 574 (1990). In instances where an attorney represents a governmental entity, the attorney-client privilege protects only an attorney's legal advice and confidential attorney-client communications. *Id.* After reviewing the documents for which you raise section 552.107(1), we conclude that none of the information contained therein constitutes an attorney's legal advice or a client's confidence coming within the attorney-client privilege. Consequently, the department may not withhold any of the information contained in the two hand written pages submitted to our office pursuant to section 552.107(1).

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).

Additionally, in Open Records Decision No. 429 (1985), this office indicated that information protected by section 552.111 must be prepared by a person or entity with an official reason or duty to provide the information in question. *See also* Open Records Decision Nos. 283 (1981), 273 (1981). This helps assure that the information plays a role in the deliberative process; if it does not, it is not entitled to protection under section 552.111. Open Records Decision No. 464 (1987). *See Wu v. National Endowment of the Humanities*, 460 F.2d 1030 (5th Cir.), *cert. denied*, 410 U.S. 926 (1972).

After reviewing the documents at issue, we conclude that only one of the three documents you submitted to this office contains advice, opinion, or recommendation coming within the protection of section 552.111; we have marked the portions of this memorandum that the department may withhold under this exception. The remaining portions of this memorandum, as well as the other two documents you seek to withhold, consist of purely factual material, none of which is protected from public disclosure under section 552.111. Consequently, the department must release the remaining 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,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/RWP/nc

Ref.: ID# 128064

Encl. Marked documents

cc: Mr. Mason Terry
Broyles & Pratt
8858 Austin Center Boulevard, Suite 250
Austin, Texas 78731
(w/o enclosures)