



March 3, 2000

Ms. Sara Shiplet Waitt
Senior Associate Commissioner
Legal and Compliance Division
Texas Department of Insurance
333 Guadalupe
P.O. Box 149104
Austin, Texas 78714-9104

OR2000-0866

Dear Ms. Waitt:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 132876.

The Texas Department of Insurance (the “department”) received a request for copies of certain “consent orders” and for reports prepared by a named individual. You seek to withhold the requested reports under sections 552.101 and 552.111 of the Government Code.

Section 552.101 requires withholding, *inter alia*, information made confidential by statute. Article 24.06(b) of the Insurance Code provides, with exceptions that do not appear to be applicable here:

All reports of examinations or investigations and all correspondence and memoranda concerning or arising out of those examinations or investigations, including any duly authenticated copy or copies of those reports in the possession of any licensee or the board, are confidential communications, are not subject to subpoena, and may not be made public, except in connection with a hearing under Article 24.05 of this chapter and any appearance in connection with such a hearing.

Having reviewed your arguments and the information for which you claim the protection of article 24.06(b), we conclude that you must withhold such information under that provision.

Section 552.111 of the Government Code 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, 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.]

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).

Section 552.111 does not protect facts and written observation of facts and events that are severable from advice, opinions, and recommendation. ORD 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). We have marked those portions of the information you submitted which may be withheld under section 552.111. Except as noted above, the requested information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

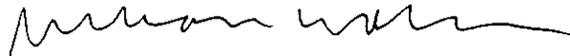
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the

governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



William Walker
Assistant Attorney General
Open Records Division

WMW/ljp

Ref: ID# 132876

Encl. Submitted documents

cc: Mr. William B. Federman
FOR THE FIRM
2900 Oklahoma Tower
210 Park Avenue
Oklahoma City, Oklahoma 73102-5605
(w/o enclosures)