



February 8, 2001

Ms. Janice Mullenix  
Associate General Counsel  
Texas Department of Transportation  
125 E 11<sup>th</sup> Street  
Austin, Texas 78701-2483

OR2001-0491

Dear Ms. Mullenix:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 144025.

The Texas Department of Transportation (the “department”) received a written request for all information pertaining to state permitting applications and any other correspondence relating to the approval or denial of two billboards erected in Salado, Texas. You state that the department will release most of the requested information to the requestor. You contend, however, that certain internal e-mail communications and memoranda are excepted from disclosure under sections 552.107(1) and 552.111 of the Government Code.

Section 552.107(1) of the Government Code 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 or opinion and client confidences. *Id.* The privilege extends to communications “between the client or a representative of the client and the client’s lawyer or a representative of the lawyer.” Tex. R. Evid. 503(b)(1)(A). Based on your representation that two of the correspondents are “non-lawyer employees” “who operated under the direct supervision of lawyers throughout the relevant period,” we conclude that all of the various correspondence you submitted to this office as Exhibit C may be withheld in their entirety pursuant to section 552.107(1) of the Government Code.

You next contend that the memorandum you submitted as Exhibit D is excepted from public disclosure pursuant to section 552.111 of the Government Code, which excepts from required public disclosure "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." Gov't Code § 552.111. 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 protect facts and written observation of facts and events that are severable from advice, opinions, and recommendation. Open Records Decision No. 615 at 5. We have marked those portions of the inter-office memorandum submitted as Exhibit D that the department may withhold pursuant to section 552.111. The remaining portions of that memorandum must be released to the requestor.

In summary, the department may withhold pursuant to section 552.107(1) the entire contents of Exhibit C. The department may withhold pursuant to section 552.111 only those portions of Exhibit D that we have marked; the remaining information in this document 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

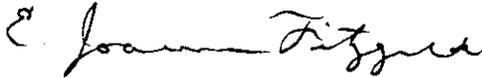
that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

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,



E. Joanna Fitzgerald  
Assistant Attorney General  
Open Records Division

EJF/RWP/seg

Ref: ID# 144025

Encl. Submitted documents

cc: Mr. Mark L. Reynolds  
Lamar Advertising Company  
109 South General Bruce Drive  
Temple, Texas 76504  
(w/o enclosures)