



March 23, 2001

Ms. Cathy Bradford
Open Records Coordinator
Texas Parks and Wildlife Department
4200 Smith School Road
Austin, Texas 78744-3291

OR2001-1144

Dear Ms. Bradford:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 145293.

The Texas Parks and Wildlife Department (the "department") received a request for copies of all documents, from 1995 to the present, related to pollution events and fish kills caused by or related to the dairy industry in or around the Upper and/or North Bosque River watershed. You contend that the submitted information is not responsive to the request. You further claim that, to the extent this office may find the submitted information to be responsive to the request, the information is excepted from disclosure under section 552.111 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

First, we address your contention that the submitted documents are not responsive to the request. After a careful review of the submitted information, we find that it is responsive to the request.

Next, we consider your assertion that the submitted information is excepted from disclosure under section 552.111 of the Government Code. Section 552.111 excepts from disclosure "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." 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. An agency's policymaking functions do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. ORD 615 at 5-6. Additionally, section 552.111 does not generally except from disclosure

purely factual information that is severable from the opinion portions of internal memoranda. *Id.* at 4-5. Yet, where a document is a genuine preliminary draft that has been released or is intended for release in final form, factual information in that draft which also appears in a released or releasable final version is excepted from disclosure by section 552.111. Open Records Decision No. 559 (1990). However, severable factual information appearing in the draft but not in the final version is not excepted by section 552.111. *Id.*

You have submitted to this office two types of documents that you seek to withhold under section 552.111: (1) draft versions of the department's comment letter to the Texas Natural Resource Conservation Commission (the "TNRCC") regarding the total maximum daily load (the "TMDL") allocation for the North Bosque River, and (2) intra-agency electronic mail memoranda. You state that the requestor has received a copy of the final comment letter submitted by the department to the TNRCC, as noted in the request letter. You further state that the submitted electronic mail memoranda relate to the process of formulating the department's comment letter to the TNRCC.

We agree that much of the submitted information reflects the policy-making process of the department. We have marked the information in Attachment III that we conclude is advice, opinions, and recommendations that is protected by section 552.111 and, thus, may be withheld. We note that the drafts in Attachment IV contain factual information that does not appear in the final version of the comment letter to the TNRCC. Thus, we have marked the severable factual information in Attachment IV that must be released to the requestor. The remaining unmarked information in Attachment IV may be withheld under section 552.111. We note that the department has the discretion to release information that is excepted from disclosure under section 552.111. *See* Gov't Code § 552.007; Open Records Decision No. 470 at 7 (1987) (Public Information Act does not prohibit the release of information protected only by section 552.111).

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,



Karen A. Eckerle
Assistant Attorney General
Open Records Division

KAE/er

Ref: ID# 145293

Encl: Marked documents

cc: Ms. Susan E. Potts
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(w/o enclosures)