



August 6, 2001

Ms. Michelle Simpkins  
Winstead Sechrest & Minick  
Attorneys And Counselors  
100 Congress Avenue, Suite 800  
Austin, Texas 78701

OR2001-3406

Dear Ms. Simpkins:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 150322.

The Brushy Creek Municipal Utility District (the "district"), which you represent, received a request for documents "prepared by or responded to" by attorneys employed by the district, or received from any other attorneys, since April 5, 2001. You state that some of the responsive information will be made available to the requestor. You claim that other responsive information is excepted from disclosure under sections 552.105, 552.107, and 552.111 of the Government Code. We have considered the exceptions you raise and have reviewed the information you submitted.

Section 552.107(1) of the Government Code protects information that comes within the attorney-client privilege. In Open Records Decision No. 574 (1990), this office concluded that section 552.107(1) excepts from disclosure only what rule 1.05 of the Texas Disciplinary Rules of Professional Conduct defines as "privileged information," that is, either client confidences or the attorney's legal advice or opinions. See ORD 574 at 5. Section 552.107(1) does not apply to all client information held by a governmental body's attorney. *Id.* Section 552.107(1) does not protect purely factual information. *Id.* Thus, this exception does not except from disclosure the factual recounting of events or the documentation of calls made, meetings attended, and memos sent. *Id.* You represent to this office that the document submitted as Exhibit B is a memorandum prepared at the district's request by its attorneys. You assert that this document constitutes a privileged attorney-client communication that section 552.107(1) protects from public disclosure. Based on your representations, we agree that the district may withhold Exhibit B in its entirety under section 552.107(1).

Section 552.111 of the Government Code 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.” The purpose of section 552.111 is to protect advice, opinion, and recommendation in the decisional process and to encourage open and frank discussion in the deliberative process. *See Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.--San Antonio 1982, no writ); Open Records Decision No. 538 at 1-2 (1990). In Open Records Decision No. 615 (1993), this office re-examined the statutory predecessor to section 552.111 in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ). We determined that section 552.111 excepts only those internal communications that consist of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. *See* ORD 615 at 5.

In Open Records Decision No. 559 (1990), this office concluded that a preliminary draft of a document that is intended for public release in its final form necessarily represents the advice, opinion, and recommendation of the drafter with regard to the form and content of the final document, so as to be excepted from disclosure under the statutory predecessor to section 552.111. *See id.* at 2. Section 552.111 protects factual information in the draft that also will be included in the final version of the document. *See id.* at 2-3. Thus, section 552.111 encompasses the entire contents, including comments, underlining, deletions, and proofreading marks, of a preliminary draft of a policymaking document that will be released to the public in its final form. *See id.* at 2. You represent to this office that the document submitted as Exhibit C is a preliminary draft of a prospective agreement for the annexation of property by the district. You inform us that you expect the agreement to be revised extensively in connection with negotiations between the district and the property developer. You state that the district plans to release the final form of the agreement to the public as soon as it is finalized and approved. Based on your representations, we conclude that the district also may withhold Exhibit C from the requestor under section 552.111 of the Government Code.

In summary, the district may withhold Exhibit B in its entirety under section 552.107(1) of the Government Code and Exhibit C in its entirety under section 552.111. As we are able to make these determinations, we need not address section 552.105.

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).

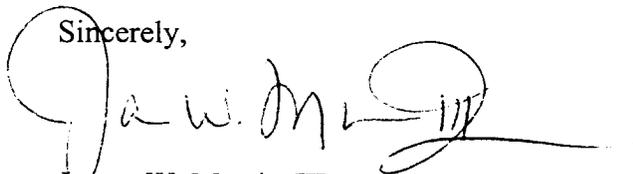
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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

A handwritten signature in black ink, appearing to read "James W. Morris, III". The signature is written in a cursive style with a large initial "J" and a long horizontal flourish at the end.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/er

Ref: ID# 150322

Enc: Submitted documents

c: Mr. John C. McLemore  
8400 Cornerwood Drive  
Austin, Texas 78717  
(w/o enclosures)