



May 23, 2002

Mr. Alan J. Bojorquez  
Bickerstaff, Heath, Smiley, Pollan, Keven & McDaniel, L.L.P.  
816 Congress Avenue, Suite 1700  
Austin, Texas 78701-2443

OR2002-2775

Dear Mr. Bojorquez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 163347.

The City of Brady (the “city”), which you represent, received a request for the ordinance regulating the recording of city council meetings, any legal opinion or correspondence concerning the regulating of recording or the ordinance, and the audit and management letter for fiscal year ending September 30, 2001. You advise that you have released the ordinance and the audit responsive to the request. You claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.107, and 552.111 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

You claim that the information responsive to the portion of the request for legal opinions or correspondence is excepted from disclosure under section 552.107. Section 552.107(1) protects information encompassed by the attorney-client privilege. We note that in instances where an attorney represents a governmental entity, the attorney-client privilege protects only an attorney’s legal advice and the client’s confidences made to the attorney. *See Open Records Decision No. 574 (1990)*. Section 552.107(1) excepts information that an attorney cannot disclose because of a duty to his client. In *Open Records Decision No. 574 (1990)*, this office concluded that section 552.107 excepts from disclosure only “privileged information,” that is, information that reflects either confidential communications from the client to the attorney or the attorney’s legal advice or opinions; it does not apply to all client information held by a governmental body’s attorney. *See id.* at 5.

You inform this office that the letter submitted as Exhibit B constitutes a confidential communication between the city and two attorneys at the firm which represents the city. You further advise that the communication consists of legal advice and opinion related to the drafting of various city ordinances, including the video recording ordinance referenced in the request for information. Upon review of your arguments and the submitted information, we conclude that the information submitted as Exhibit B is covered by the attorney-client privilege, and is therefore excepted from disclosure under section 552.107(1). As section 552.107 is dispositive, we do not address your claim under section 552.101 or section 552.111 for this information.

You also argue that the submitted audit management letter is excepted under section 552.111. 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. *City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 364 (Tex. 2000); *Arlington Indep. Sch. Dist. v. Texas Attorney Gen.*, 37 S.W.3d 152 (Tex. App.--Austin 2001, no pet.). Section 552.111 does not generally except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. *Arlington Indep. Sch. Dist.*, 37 S.W.3d at 160; ORD 615 at 4-5. Section 552.111 applies to information created for a governmental body by an outside consultant when the consultant is acting at the request of the governmental body and performing a task within the authority of the governmental body. Open Records Decision No. 631 (1995).

You claim that the document submitted as Exhibit C constitutes a communication between the city and its accountant, and consists of policy recommendations currently being considered in the city's deliberative process. After reviewing the document, we agree that it is an internal communication consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the city. Therefore, this information may be withheld under section 552.111. As section 552.111 is dispositive, we do not address your claim under section 552.101 for this information.

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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Kristen Bates  
Assistant Attorney General  
Open Records Division

KAB/seg

Ref: ID# 163347

Enc. Submitted documents

c: Ms. Gayla Bowen  
Bowen Real Estate  
102 West Main Street  
Brady, Texas 76825  
(w/o enclosures)