



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

April 15, 2003

Ms. Tenley Aldredge  
Assistant County Attorney  
Travis County  
P.O. Box 1748  
Austin, Texas 78767

OR2003-2556

Dear Ms. Aldredge:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 179419.

The Travis County Transportation and Natural Resources Department (the "TNR") received a request for the following three categories of information:

1. Resumes and applications of all Travis County appointees to the Regional Mobility Authority ("RMA").
2. Resumes and applications of all Williamson County appointees to the RMA.
3. All documents, records, e-mails, and notes regarding the budget, invoices, expenditures, contracts, and requests for proposals for any staff or other consultants for the RMA. This includes invoices, billings, expenditures, and requests for expenditures for the RMA.

You assert some of the submitted information is excepted from disclosure under sections 552.107, 552.111, 552.130, and 552.137 of the Government Code. Also, you inform us the TNR will release the remainder of the requested information to the requestor. We have reviewed the information you submitted and we have considered the exceptions you claim.

Initially, we note section 552.022 of the Government Code governs some of the submitted information. Section 552.022 states the following, in relevant part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

...

(5) all working papers, research material, and information used to estimate the need for or expenditure of public funds or taxes by a governmental body, on completion of the estimate[.]

Gov't Code § 552.022(a)(5). We believe some of the submitted information constitutes working papers used to estimate the expenditure of public funds by a governmental body, on completion of the estimate. Thus, the TNR may not withhold information pertaining to completed estimates subject to section 552.022(a)(5) of the Government Code, unless other law makes such information confidential. Sections 552.107 and 552.111, discretionary exceptions under the Public Information Act (the "Act"), do not constitute "other law" that makes the information we have marked confidential. *See* Open Records Decision Nos. 630 at 4 (1994) (governmental body may waive section 552.107(1)), 473 (1987) (governmental body may waive section 552.111); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the TNR may not withhold information pertaining to completed estimates under sections 552.107 and 552.111 of the Government Code. Thus, as you raise no other exception to the disclosure, the TNR must release the information we have marked under subsection 552.022(a)(5) of the Government Code.

Next, we address the applicability of your claimed exceptions to the remainder of the submitted information. Section 552.107(1) of the Government Code protects information coming within the attorney-client privilege. When asserting the attorney-client privilege, a governmental body has the burden of providing the necessary facts to demonstrate the elements of the privilege to withhold the information at issue. Open Records Decision No. 676 at 6-7 (2002). First, a governmental body must demonstrate that the information constitutes or documents a communication. *Id.* at 7. Second, the communication must have been made "for the purpose of facilitating the rendition of professional legal services" to the client governmental body. TEX. R. EVID. 503(b)(1). The privilege does not apply when an attorney or representative is involved in some capacity other than that of providing or facilitating professional legal services to the client governmental body. *In re Texas Farmers Ins. Exch.*, 990 S.W.2d 337, 340 (Tex. App.—Texarkana 1999, orig. proceeding) (attorney-client privilege does not apply if attorney acting in a capacity other than that of attorney).

Governmental attorneys often act in capacities other than that of professional legal counsel, such as administrators, investigators, or managers. The mere fact that a communication involves an attorney for the government does not demonstrate this element. Third, the privilege applies only to communications between or among clients, client representatives, lawyers, and lawyer representatives. TEX. R. EVID. 503(b)(1)(A), (B), (C), (D), (E). Thus, a governmental body must inform this office of the identities and capacities of the individuals to whom each communication at issue has been made. Lastly, the attorney-client privilege applies only to a *confidential* communication, *id.* 503(b)(1), meaning it was “not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication.” *Id.* 503(a)(5). Whether a communication meets this definition depends on the *intent* of the parties involved at the time the information was communicated. *Osborne v. Johnson*, 954 S.W.2d 180, 184 (Tex. App.—Waco 1997, no writ). Moreover, because the client may elect to waive the privilege at any time, a governmental body must explain that the confidentiality of a communication has been maintained. Section 552.107(1) generally excepts an entire communication that is demonstrated to be protected by the attorney-client privilege unless otherwise waived by the governmental body. *See Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein).

You explain the communications labeled “107” constitute communications between the County Attorney’s Office and its clients, the TNR and the Travis County Commissioners, or their agents or representatives. Further, you state the parties to these communications intended to keep these communications confidential as they were made for the purpose of rendering legal advice. Based on your arguments and a review of the documents, we agree some of the information you have labeled “107” constitutes communications made for the purpose of facilitating legal services. Accordingly, we have marked the information the TNR may withhold under section 552.107 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. *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.). This exception applies not only to internal memoranda, but also to memoranda prepared by consultants of a governmental body. Open Records Decision Nos. 462 at 14 (1987), 298 at 2 (1981). However, 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. *Arlington Indep. Sch. Dist.*, 37 S.W.3d at 160; ORD 615 at 4-5. Yet, the preliminary draft of a policymaking document that has been released or is intended for release in final form is excepted from disclosure in its entirety under section 552.111 because such a draft necessarily represents the advice, recommendations, or opinions of the drafter as to the form and content of the final document. Open Records Decision No. 559 at 2 (1990).

In this instance, you contend the documents labeled "111" "reflect the legal, financial, budgetary and 'political' impact and/or repercussions of the then-proposed RMA project on Travis County policy[.]" You explain the documents at issue consist of drafts, memoranda, impact statements, and correspondence as well as proposed plans, time lines, and presentations related to the adoption of the RMA. Based on your arguments and our review of the submitted information, we agree some of the information you have labeled "111" reflects the policymaking process of the TNR with respect to the development and adoption of the RMA.

However, when determining if an interagency memorandum is excepted from disclosure under section 552.111, we must consider whether the agencies between which the memorandum is passed share a privity of interest or common deliberative process with regard to the policy matter at issue. *See* Open Records Decision No. 561 at 9 (1990). Accordingly, with respect to the interagency memoranda between the TNR and the Texas Department of Transportation ("TxDoT") that are related to the formation of the RMA, we conclude the TNR and TxDoT do not share a privity of interest or common deliberative process with regard to the policy matter at issue. Therefore, the TNR may not withhold these interagency memoranda under section 552.111. The TNR may withhold the information we have marked in accordance with section 552.111 of the Government Code.

Section 552.130 of the Government Code excepts from public disclosure information relating to a driver's license or a motor vehicle title or registration issued by an agency of this state. In this case, the submitted information contains driver's license numbers, which you have highlighted. Therefore, we agree the TNR must withhold this information under section 552.130 of the Government Code.

Finally, the submitted information contains e-mail addresses subject to section 552.137 of the Government Code. Specifically, section 552.137 states the following:

- (a) An e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.

(b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.

Govt. Code § 552.137. This provision makes private e-mail addresses confidential. *See* Gov't Code § 552.137. You do not inform us any member of the public has affirmatively consented to the release of the e-mail addresses contained in the submitted materials. Therefore, the TNR must withhold the e-mail addresses of the members of the public, which we have marked, under section 552.137 of the Government Code.<sup>1</sup>

In summary, the TNR must release the information we have marked pursuant to section 552.022(a)(5) of the Government Code. The TNR must withhold the highlighted information pertaining to motor vehicle records under section 552.130 of the Government Code. Further, the TNR must withhold the e-mail addresses we have marked in accordance with section 552.137 of the Government Code. Finally, the TNR may withhold some of the submitted information, which we have marked, under section 552.107 or 552.111 of the Government Code.

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

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<sup>1</sup> Section 552.137 does not apply to a general business e-mail address or to a government employee's work e-mail address.

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 Dep't of Pub. 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,



Christen Sorrell  
Assistant Attorney General  
Open Records Division

CHS/sdk

Ref: ID# 179419

Enc: Submitted documents

c: Ms. Amy Johnson  
1310 Kenwood Avenue  
Austin, Texas 78704  
(w/o enclosures)