



April 28, 2000

Mr. Jeffrey A. Saitas
Executive Director
Texas Natural Resource Conservation Commission
P.O. Box 13087
Austin, Texas 78711-3087

OR2000-1669

Dear Mr. Saitas:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 134611.

The Texas Natural Resources Conservation Commission (the "commission") received a request for information related to a study of low-level radiation waste management using assured isolation facilities. You claim that the submitted representative sample of the requested information is excepted from disclosure under sections 552.106, 552.107 and 552.111 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Section 552.111 of the Government Code excepts from required public disclosure interagency and intra-agency memoranda and letters, but only to the extent that they contain advice, opinion, or recommendation intended for use in the entity's policymaking process. Open Records Decision No. 615 at 5 (1993). The purpose of this section is "to protect from public disclosure advice and opinions *on policy matters* and to encourage frank and open discussion within the agency in connection with its decision-making processes." *Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.--San Antonio 1982, writ ref'd n.r.e.) (emphasis added). However, an agency's policymaking functions do not encompass internal administrative or personnel matters, as disclosure of information relating

¹In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988); 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

to such matters will not inhibit free discussion among agency personnel as to policy issues. Open Records Decision No. 615 at 5-6 (1993). Although section 552.111 does not protect facts and written observation of facts and events that are severable from advice, opinions, and recommendation, *see* Open Records Decision No. 615 at 5 (1993), if the factual information is so inextricably intertwined with material involving advice, opinion, or recommendation as to make separation of the factual data impractical, that information may be withheld. Open Records Decision No. 313 (1982). Upon careful review of your arguments and the submitted information, we agree that most of the information submitted for our review may be withheld from public disclosure pursuant to section 552.111 of the Government Code. We have marked the documents accordingly.

You also seek to withhold from disclosure information you claim is protected by section 552.107 of the Government Code. 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 public 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. *Id.* at 5. We have marked the information which may be withheld under section 552.107(1) of the Government Code.

You assert that certain information is excepted from disclosure pursuant to section 552.106 of the Government Code. Section 552.106 protects drafts and working papers involved in the preparation and enactment of proposed legislation. Open Records Decision No. 429 (1985). The purpose of the exception is similar to that of section 552.111: to encourage frank discussion on policy matters between the subordinates or advisors of a legislative body and the legislative body and to thereby protect the internal "deliberative" or policy-making processes of a governmental body. Open Records Decision No. 460 (1987). Section 552.106 does not except purely factual material; rather, it excepts only policy judgments, recommendations, and proposals involved in the preparation of proposed legislation. Section 552.106 applies only to drafts and working papers prepared by persons with some official responsibility to prepare them for the legislative body. *Id.* We agree that certain information you have marked may be withheld from disclosure under section 552.106. The remaining information for which you have asserted protection under section 552.106 must be released to the requestor.

You have marked home telephone numbers, cellular phone numbers, and pager numbers which you assert are excepted from disclosure. We have marked additional pager numbers contained in the submitted documents. Section 552.117 of the Government Code excepts from disclosure the home addresses, telephone numbers, and social security numbers of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. The commission may not, however, withhold this information for a current or former official or employee who made a request for confidentiality under section 552.024 after the request for this information was made. Whether a particular piece of information is public must be determined at the time the

request for it is made. Open Records Decision No. 530 at 5 (1989). You have not submitted to this office information that demonstrates that the commission employees elected to keep their home phone numbers confidential prior to the date on which the commission received the request for information. Thus, we are unable to determine whether the commission must withhold the information under section 552.117. If the employees have made such an election, the commission must not release the home phone numbers related to those employees. Furthermore, this office has stated:

The purpose of [sections 552.024 and 552.117] is to protect public officials and employees from being harassed while at home. Arguably, similar considerations apply to cellular mobile phones installed by the county in public officials' and employees private vehicles.

Open Records Decision No. 506 at 5 (1988). Therefore, you must withhold the cellular telephone numbers and pager numbers of employees who, at the time of the request for the information, had made a signed, written election to keep this information private, as provided in section 552.024. Open Records Decision Nos. 530 at 5 (1989), 482 at 4 (1987), 455 (1987).² We have marked the submitted information in accordance with this ruling.

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

²For purposes of granting section 552.117, we assume that the pager was purchased and privately owned by the commission employees. See Open Records Decision No. 506 at 5-6 (1988) (predecessor to section 552.117 does not apply to cellular mobile phone numbers paid for by county and intended for use at work for county business; different considerations apply if employee pays for purchase and installation of and calls to and from mobile phone in his private vehicle and simply seeks reimbursement for calls made on county business).

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).

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,



Carla Gay Dickson
Assistant Attorney General
Open Records Division

CGD/ljp

Ref: ID# 134611

Encl. Marked documents

cc: Mr. Lawrence R. Jacobi, Jr.
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(w/o enclosures)