



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 30, 1994

Ms. Lisa A. Capers
General Counsel
Texas Juvenile Probation Commission
P.O. Box 13547
Austin, Texas 78711

OR94-607

Dear Ms. Capers:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 26749.

The Texas Juvenile Probation Commission (the "commission") received an open records request for "surveys filled out by Harris County Juvenile Probation Department employees as part of the [commission's] review/study of that agency." You explain that the commission conducted a management study of the Harris County Juvenile Probation Department (the "department") at the request of the Juvenile Board of Harris County for the purpose of making recommendations for needed changes within the department. You initially argue that the commission should not release the requested survey responses because the commission assured the respondents that "their identities and responses would be protected from release to anyone other than [commission] staff in an effort to solicit honest, frank input and advice." We note, however, that information is not confidential under the Open Records Act simply because the party submitting the information anticipates or requests that it be kept confidential. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976), *cert. denied* 430 U.S. 931 (1977). In other words, a governmental body cannot, through an agreement, overrule or repeal provisions of the Open Records Act. Attorney General Opinion JM-672 (1987).

You also contend that, because section 552.022(1) of the Government Code specifically provides that "completed" reports made for or by governmental bodies are public information, the commission need not release the survey responses, which constitute the "raw data" of a report the commission intends to release in the future. Section 552.022(1) does not, however, imply that "incomplete" reports, or reports that have not been "accepted" by a governmental body, are automatically excepted from required

disclosure. Open Records Decision No. 460 (1987) at 3. The applicable test for whether information must be disclosed is twofold: whether the requested information is collected, assembled, or maintained by a governmental body, and, if so, whether the information falls within one of the specific exceptions to disclosure under subchapter C of the act. *Id.* Consequently, unless the requested information falls within one of the act's exceptions to disclosure that you have raised, it must be released, notwithstanding any representation the commission has made to the respondents specifying otherwise.

You contend that the survey responses come under the protection of section 552.111. Section 552.111 excepts from required public disclosure "an interagency or intra-agency memorandum or letter that would not be available by law to a party in litigation with the agency." This section protects only those internal agency communications consisting of advice, recommendations, and opinions intended for use in the entity's policymaking process.¹ It does not protect facts or written observations of facts unless the factual information is so inextricably intertwined with advice, recommendations, or opinions that separation is impractical. Open Records Decision Nos. 615 (1993) at 5; 313 (1982). The purpose of section 552.111 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). In Open Records Decision No. 615 at 5, this office concluded that

to come within the [section 552.111] exception, information must be related to the *policymaking* functions of the governmental body. An agency's policymaking functions do not encompass routine internal administrative and personnel matters [Emphasis in original.]

Whether requested information constitutes advice, recommendations, or opinions related to the governmental body's policymaking functions must be determined on a case-by-case basis. See Open Records Decision No. 328 (1982) at 2.

In this case, we conclude that portions of the requested survey responses are excepted from disclosure by section 552.111. The subject matter of the survey does not constitute "routine internal administrative and personnel matters" but rather directly relates to the policy mission of the department. Therefore, the contents of the survey responses come within the protection of section 552.111. Furthermore, we have reviewed all of the survey responses you submitted for review and find that much of the factual

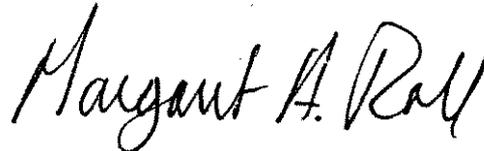
¹In Open Records Decision No. 429 (1985), this office indicated that information protected by section 552.111 must be prepared by a person or entity with an official reason or duty to provide the information in question. See also Open Records Decision Nos. 283, 273 (1981). This helps assure that the information plays a role in the deliberative process; if it does not, it is not entitled to protection under section 552.111. Open Records Decision No. 464 (1987). In this regard, because the commission specifically sought the opinions of the department's employees, clearly the commission intended to use the survey responses during its deliberative process.

information provided in the responses is inextricably intertwined with opinions and recommendations and, thus, may be withheld. On the other hand, the portions of the survey responses in which the respondents indicate their primary job responsibilities contain only facts and, thus, must be released. We have marked as a sample one response that was completed on the form you provided. You must release this portion of each response that was completed on the form you provided. In addition, you must release the marked portion of one response that was not completed on the form you provided.² You may withhold, however, all the remaining portions of the requested survey responses under section 552.111.

The commission has also received a second open records request for the "survey results" as well as the surveys discussed above. You have submitted to this office, as Attachment "D," a sample draft of the final compilation of data gathered from the surveys. You have contended that draft documents constitute the "advice" of the drafter and as such come under the protection of section 552.111. We agree. In Open Records Decision No. 559 (1990), this office held that a preliminary draft of a document that is intended for release in a final form necessarily represents the advice, opinion, and recommendation of the drafter as to the form and content of the final document and as such may be withheld pursuant to the predecessor of section 552.111. Based on your representation that the commission's report on the department will contain the survey results and that those results will be made available to the requestor once the report is in final form, we conclude that the commission may withhold the draft of the survey results at this time pursuant to section 552.111.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with an informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Margaret A. Roll
Assistant Attorney General
Open Government Section

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²We note that the information you must release from these survey responses will also be available in a more compact form in your final report regarding this survey. Although the Open Records Act does not permit you to refuse to release one document simply because the same information exists in another document that you are willing to release, you may ask the requestor if he would accept the information in its more compact form.

Ref.: ID# 26749

Enclosures: Marked documents

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