



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 13, 1995

Mr. S. Anthony Safi  
Mounce & Galatzan, P.C.  
Seventh Floor  
Texas Commerce Bank Building  
201 East Main Drive  
El Paso, Texas 79901-1334

OR95-1406

Dear Mr. Safi:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, Government Code chapter 552. We assigned your request ID# 27393.

The El Paso Independent School District (the "school district"), which you represent, has received a request for certain financial records. Specifically, the requestor seeks "[t]he EPISD Monthly Financial Statements from July 1993 through May 1994." You have submitted a representative sample of the requested information to us for review and claim that section 552.111 of the Government Code exempts it from required public disclosure.

As a threshold issue, we address your contention that the requested information is not subject to the Open Records Act because it is not "a completed report" within the meaning of section 552.022(1) of the Government Code. This argument was considered and rejected in prior decisions of this office. See Open Records Decision No. 407 (1984), 140 (1976). In Open Records Decision No. 407 (1984) at 3, this office concluded that a governmental body could not withhold information merely because it had not yet become part of a completed report. Information in the possession of "a governmental body" is generally available to the public. Gov't Code § 552.021. The requested information is information in the possession of a governmental body and is therefore subject to the Open Records Act. It may be withheld from required public disclosure only if it falls within any of the exceptions enumerated in Subchapter C (sections 552.101 through 552.123) of the Open Records Act.

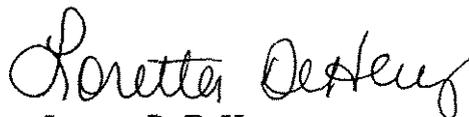
You claim that section 552.111 of the Government Code exempts the requested information from required public disclosure. Section 552.111 exempts from required public disclosure "[a]n interagency or intraagency memorandum or letter that would not

be available by law to a party in litigation with the agency . . . .” This section protects from disclosure advice, opinions, and recommendations; it does not protect facts or written observations of facts. Open Records Decision No. 615 (1993) at 5. Furthermore, this section applies only to interagency and intraagency memoranda. The purpose of section 552.111 is to prevent disclosure of information that, if released, will inhibit free discussion among agency personnel as to policy issues. *See id.* at 5-6. Where a record is genuinely a preliminary draft of a document that has been released or is intended for release in a final form, the 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 (1990). Purely factual information in a preliminary draft, however, where severable from information that constitutes “advice, opinion, or recommendation,” may not be withheld under section 552.111. *Id.* at 2; *see also* Open Records Decision No. 450 (1986).

You contend that the monthly financial statements fall within the section 552.111 exception because they are drafts and “reflect, in effect, the opinions of the District’s internal financial personnel regarding the financial status of the District.” You characterize the monthly financial statements as drafts because they are subject to audit and possible adjustment by the school district’s outside auditors. You do not indicate, however, that the monthly financial statements are intended for release in a final form. Consequently, the monthly financial statements are not preliminary or tentative in nature. *See WEBSTER’S NINTH NEW COLLEGIATE DICTIONARY* 380 (1990) (definition of “draft” as “a preliminary . . . version, sketch, or outline”). Rather, the financial statements appear to be final, best-estimate assessments of the school district’s financial status in a given month. The fact that these monthly financial statements may contain estimates or inaccuracies subject to audit and revision at year’s end does not make them drafts. Having reviewed the submitted information, we conclude that it does not contain “advice, opinions, and recommendations” used in the school district’s policymaking or deliberative process. Accordingly, we conclude that the requested information may not be withheld from required public disclosure under section 552.111 of the Government Code. The school district must promptly release the requested information in its entirety.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay  
Assistant Attorney General  
Open Records Division

Ref.: ID# 27393

Enclosures: Submitted documents

cc: Ms. Frances Wever  
President  
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(w/o enclosures)