



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 16, 1998

Mr. David Hay  
Dallas County Community College District  
R. L. Thornton, Jr. Building  
701 Elm Street  
Dallas, Texas 75202-3299

OR98-3162

Dear Mr. Hay:

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# 119569.

The Dallas County Community College District Foundation Office (the "foundation") received an open records request for, among other things,

all correspondence, letters, memos and E-Mail etc., for the last five years which are now in existence, between (yourself and Nancy LeCroy,) and William Wenrich, Bill Tucker, Jack Stone, and all College Presidents and Institute Provosts, and all DCCCD Foundation employees, and all DCCCD Foundation Members of the Board of Directors.

You have submitted to this office as responsive to the request various letters, inter-office memoranda, and attached documents, which you state are representative of the requested records. You contend these documents are excepted from required public disclosure pursuant to section 552.111 of the Government Code. You also state that "[s]ome of the documents may be protected under § 552.101."<sup>1</sup>

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." We note at the

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<sup>1</sup>We assume for purposes of this ruling that you have timely requested an open records decision from this office in accordance with section 552.301 of the Government Code.

outset 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 a contract, overrule or repeal provisions of the Open Records Act. Consequently, unless the requested information falls within an exception to disclosure, it must be released, notwithstanding any agreement between the foundation and a third party specifying otherwise.

Two of the documents you submitted to this office consist of excerpts from will documents. One of these documents appears to be a part of a probated will, and as such must be released. *See* Attorney General Opinions JM-229 (1984); H-917 (1976) (right of privacy lapses upon death); *cf. Star Telegram v. Walker*, 834 S.W.2d 54 (1992) (information contained in public court record not protected by common-law privacy). The other will document, on the other hand, does not appear to have been filed for probate. We believe that this document implicates the privacy interests of the testator. *See generally Industrial Found.*, 540 S.W.2d at 683-85 (Tex. 1976) (common-law privacy protects highly intimate or embarrassing information if of no legitimate concern to the public). Accordingly, this document must be withheld pursuant to common-law privacy. Additionally, we have marked other documents, or portions thereof, that must also be withheld on privacy grounds. *Cf. Open Records Decision Nos. 545* (1990) (personal financial decisions protected by common-law privacy), 169 (1977). *But see Open Records Decision No. 590* (1991) (disclosure of name of donor and amounts donated to public university not protected under section 552.101).

We now address the applicability of section 552.111 to the records at issue. Section 552.111 of the Government Code excepts 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* (1993) at 5. 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). In *Open Records Decision No. 615* at 5, this office held 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.]

In *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* (1981), 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). Additionally, section 552.111 does not protect facts and written observation of facts and events that are severable from advice, opinions, and recommendation. Open Records Decision No. 615 at 5. If, however, 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).

After reviewing the documents you submitted to this office, we have determined that most of the information at issue is either purely factual in nature or was submitted to the foundation by individuals playing no official role in the foundation's policy-making process. We have identified a few documents, or portions thereof, that the foundation may withhold as information coming within the protection of section 552.111 and have marked these documents accordingly.<sup>2</sup> All remaining information must be released.

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 should 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,



Sandra L. Coaxum, CPA  
Chief, Open Records Division

SLC/RWP/rho

Ref.: ID# 119569

Enclosures: Submitted documents

cc: Mr. Philip G. Thomas  
6431 Preston Crest Lane  
Dallas, Texas 75230  
(w/o enclosures)

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<sup>2</sup>In 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 No. 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.