



March 27, 2001

Ms. Charlene Meadows  
Interim Director  
Deep East Texas Workforce Development Board  
1318 South John Redditt, Suite C  
Lufkin, Texas 75904

OR2001-1213

Dear Ms. Meadows:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 145360.

The Deep East Texas Local Workforce Development Board (the "board") received a request for "a copy of the Board meeting packets that are mailed prior to scheduled Board Meetings." You state that the board has released to the requestor portions of the requested information. You claim that the rest of the requested information is excepted from disclosure under sections 552.104, 552.111, and 552.131 of the Government Code. Pursuant to section 552.305, you have notified two third parties, Abitibi Consolidated and Temple-Inland, whose proprietary interests may be implicated by the public release of portions of the information. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Public Information Act in certain circumstances). We have considered the exceptions you claim and reviewed the submitted information.

We note that the requestor is the Project Manager for the Deep East Texas Workforce Centers Administrative Office in Nacogdoches, Texas. Although a governmental body may treat a request for information as a request under the Public Information Act (the "Act"), the Act does not require that it do so when the requestor is an employee of that or another governmental body. *See* Attorney General Opinion JM-119 at 2 (1983). The transfer of

information within a governmental body or between governmental bodies is not necessarily a release to the public for purposes of the Act. *See id.* For example, a member of a governmental body, acting in her official capacity, is not a member of the public for purposes of access to information in the governmental body's possession. Thus, an authorized official or employee may review records of the governmental body without implicating the Act's prohibition against selective disclosure. *See* Attorney General Opinion JM-119 at 2 (1983); *see also* Open Records Decision Nos. 468 at 4 (1987). However, in this case, the board has chosen to treat this request for information as a request under the Act.

You have submitted to this office as a sample of the requested information the board meeting packet for the January 2001 meeting. Contrary to your apparent interpretation of this request as one for packets of past meetings, the request appears to be a standing request for copies of board meeting packets that are mailed prior to scheduled board meetings in the future. It is implicit in several provisions of the Act that the Act applies only to information already in existence. *See* Gov't Code §§ 552.002, .021, .227, .351. The Act does not require a governmental body to prepare new information in response to a request. *See* Attorney General Opinion H-90 (1973); *see also* Open Records Decision Nos. 87 (1975), 342 at 3 (1982), 416 at 5 (1984), 452 at 2-3 (1986), 555 at 1-2 (1990), 572 at 1 (1990). Consequently, a governmental body is not required to comply with a standing request to supply information on a periodic basis as such information is prepared in the future. *See* Attorney General Opinion JM-48 at 2 (1983); *see also* Open Records Decision Nos. 465 at 1 (1987), 476 at 1 (1987). Therefore, to the extent that this request is a standing request for copies of board meeting packets prepared for future board meetings, the Act does not require the board to respond. Nevertheless, since the board is treating the request as one for existing information and as one from a member of the public, we will address your arguments related to the submitted information, a sample packet for the January, 2001 board meeting.<sup>1</sup>

Initially, you argue that the request is not specific enough to identify the particular documents sought by the requestor. Section 552.222 of the Government Code permits a governmental body to ask the requestor to clarify or narrow the scope of the request. *See* Gov't Code § 552.222(b). However, the Act does not require the requestor here to identify every document within the meeting packets requested. In addition, a request may not be disregarded by the governmental body simply because a citizen does not specify the exact documents he or she desires. *See* Open Records Decision No. 87 (1975). You state that the information in the board meeting packet submitted to us is responsive to the request. Accordingly, we will address your claimed exceptions for the submitted information.

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<sup>1</sup> We assume that the "sample" of records submitted to this office for review 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.

You argue that a portion of the submitted information is excepted from disclosure under section 552.104 of the Government Code. Section 552.104 provides that information is excepted from required public disclosure if release of the information would give advantage to a competitor or bidder. The purpose of this exception is to protect the interests of a governmental body usually in competitive bidding situations. See Open Records Decision No. 592 (1991). Section 552.104 requires a showing of some actual or specific harm in a particular competitive situation; a general allegation that a competitor will gain an unfair advantage will not suffice. See Open Records Decision No. 541 at 4 (1990). This exception protects information from public disclosure if the governmental body demonstrates potential harm to its interests in a particular competitive situation. See Open Records Decision No. 463 (1987). In this case, the board offers no explanation as to how release of the documents concerning video conferencing equipment bid information will cause potential harm to its interests. Therefore, section 552.104 of the Government Code is inapplicable to these documents and you must release them to the requestor. We have marked the documents concerning the video conferencing equipment bid information that must be released to the requestor.

You also argue that the draft employee personnel handbook recommended to the board for approval by the board's human resources consultant is excepted from public disclosure under section 552.111 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." Gov't Code § 552.111. 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. See *City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 364 (Tex. 2000); see also *Arlington Indep. Sch. Dist. v. Texas Attorney Gen.*, No. 03-00-00219-CV, 2001 WL 23169, at \* 5 (Tex. App.--Jan. 11, 2001, no pet. h.). 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). Additionally, section 552.111 does not generally except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. See *Arlington Indep. Sch. Dist.* at \* 6-7; ORD 615 at 4-5. 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. See Open Records Decision No. 559 at 2 (1990).

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. *See* Open Records Decision No. 615 at 5-6. An agency's policymaking functions do include, however, administrative and personnel matters of broad scope that affect the governmental body's policy mission. *See* Open Records Decision No. 631 at 3 (1995); *see also* *City of Garland v. Dallas Morning News* at 557. As the draft employee personnel handbook concerns routine personnel matters, the board may not withhold the handbook from disclosure pursuant to section 552.111. Therefore, you must release the draft employee personnel handbook to the requestor.

With respect to the information you have identified as possible proprietary information, we note that, as of the date of this letter, none of the third parties you notified pursuant to section 552.305 has submitted to this office any comments explaining why the requested information should not be released. Therefore, we have no basis to conclude that the responsive information is excepted from disclosure under section 552.110 of the Government Code. *See* Gov't Code § 552.110(b) (to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure); *see also* Open Records Decision Nos. 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990).

You also argue that certain board packet documents are excepted from public disclosure under section 552.131 of the Government Code. Section 552.131 provides:

(a) Information is excepted from the requirements of Section 552.021 if the information relates to economic development negotiations involving a governmental body and a business prospect that the governmental body seeks to have locate, stay, or expand in or near the territory of the governmental body and the information relates to:

(1) a trade secret of the business prospect; or

(2) commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained.

(b) Unless and until an agreement is made with the business prospect, information about a financial or other incentive being offered to the business prospect by the governmental body or by another person is excepted from the requirements of Section 552.021.

(c) After an agreement is made with the business prospect, this section does not except from the requirements of Section 552.021 information about a financial or other incentive being offered to the business prospect:

(1) by the governmental body; or

(2) by another person, if the financial or other incentive may directly or indirectly result in the expenditure of public funds by a governmental body or a reduction in revenue received by a governmental body from any source.

Gov't Code, § 552.131. You argue that section 552.131 protects negotiations between the board and two local employers regarding financial incentives which may be offered by the board to the employers concerning retraining of the employers' employees. However, you have not demonstrated that the board is negotiating to have Abitibi Consolidated or Temple-Inland "locate, stay, or expand in or near the territory of" the board. *See* Gov't Code § 552.131(a). Therefore, we conclude that section 552.131 is inapplicable to the documents labeled "Reference No. 00-81" and "Reference No. 00-83." Accordingly, you must release those documents to the requestor.

In conclusion, the Act does not require you to treat the request for information as a request under the Act when the requestor is an employee of the governmental body. However, in this case, the board has chosen to treat this request for information as a request under the Act. The request appears to be a standing request for information related to future board meetings. Since the Act only applies to information already in existence and does not require you to supply information on a periodic basis as such information is prepared in the future, you are not required to respond to the request to the extent that it is a standing request. Regarding the perceived vagueness or breadth of the request, section 552.222 of the Government Code permits the board to ask the requestor to clarify or narrow the scope of the request when it may not be specific enough for the board to identify the particular documents sought by the requestor.

The responsive documents concerning video conferencing equipment bid information are not excepted pursuant to section 552.104 of the Government Code because no explanation was offered as to how release of the information would cause potential harm to the board's interests. The draft employee personnel handbook is not excepted pursuant to section 552.111 of the Government Code because it only concerns routine personnel matters. We have no basis to conclude that the responsive information is excepted from disclosure under section 552.110 of the Government Code. The documents labeled "Reference No. 00-81" and "Reference No. 00-83" are not excepted from disclosure pursuant to section 552.131 of the Government Code because the board did not demonstrate how the negotiations between itself, Abitibi Consolidated and Temple-Inland pertained to the board seeking to have Abitibi Consolidated and Temple-Inland "locate, stay, or expand in or near

the territory” of the board. In summary, all of the responsive information must be released to the requestor.

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 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).

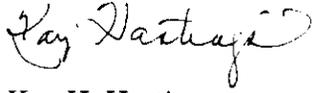
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

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 General Services 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. 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,

A handwritten signature in cursive script that reads "Kay Hastings".

Kay H. Hastings  
Assistant Attorney General  
Open Records Division

KHH/RJB/seg

Ref: ID# 145360

Encl. Marked documents

cc: Ms. Brenda B. Williams  
Project Manager  
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(w/o enclosures)