



August 1, 2001

Mr. Randel B. Gibbs  
Law Offices of Robert E. Luna  
4411 North Central Expressway  
Dallas, Texas 75205

OR2001-3347

Dear Mr. Gibbs:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 150153.

The Garland Independent School District (the "district"), which you represent, received a request for a copy of a comparative study of salaries of certain district employees, any documents relating to a study of salaries performed by, or under the auspices of, the Texas Association of School Boards, and any communications concerning the salaries of certain district employees presented to the Finance Committee of the district's Board of Trustees. You claim that the requested information is excepted from disclosure under section 552.111 of the Government Code.

You claim that the submitted draft study is excepted from disclosure pursuant to 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." 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.

Information created for a governmental body by an outside consultant acting in an official capacity on behalf of the governmental body is covered by section 552.111. *See* Open Records Decision No. 462 (1987). 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 (1993). However, an agency’s policymaking functions do include 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. Finally, 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). You state that the submitted draft study was prepared by an independent consultant on behalf of the district and that, in preparing this study, the consultant is acting at the request of the district. You also state that, although the submitted draft study relates to personnel matters, it encompasses broad policy issues that go beyond routine administrative and personnel decisions to affect the district’s long-term policy goals. You also state that you intend to release the submitted study in its entirety, once it is in its final form. We agree that the submitted draft study concerns a personnel matter of broad scope that affects the district’s policy mission. Therefore, we conclude that the submitted draft study may be withheld from disclosure pursuant to section 552.111 of the Government Code.

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).

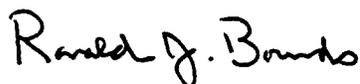
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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,



Ronald J. Bounds  
Assistant Attorney General  
Open Records Division

RJB/seg

Ref: ID# 150153

Enc. Submitted document

cc: Mr. Charles Axe  
President  
Garland Education Association  
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(w/o enclosures)