



March 18, 2002

Mr. Therold I. Farmer
Walsh, Anderson, Brown, Schulze & Aldridge, P.C.
P.O. Box 2156
Austin, Texas 78752

OR2002-1317

Dear Mr. Farmer:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 160094.

The Lago Vista Independent School District (the "district"), which you represent, received three requests for information related to certain items on the agenda of a specified board meeting, notes taken by certain officials and correspondence relating to a current audit, and notes taken by a named trustee in meetings related to certain bonds. You advise that you have released some responsive information to the requestor. You further advise that the district does not have any information responsive to the third portion of the request.¹ You claim that the remaining requested information is excepted from disclosure under sections 552.106, 552.107, 552.111, and 552.116 of the Government Code. The requestor has submitted arguments regarding why the information should be released. *See Gov't Code* § 552.304 (permitting member of the public to submit to attorney general reasons why

¹ The requestor contends that the district is attempting to circumvent the Public Information Act by claiming that it has no records responsive to this part of the request. Thus, we are faced with a factual dispute between the district and the requestor regarding whether the district has certain information in its possession. We cannot resolve disputes of fact in the open records process, and therefore, we must rely on the representations of the governmental body requesting our opinion. Open Records Decision Nos. 554 (1990), 552 (1990). Based on the your representation, we conclude that the district does not possess information responsive to this item of the request. The Public Information Act does not ordinarily require a governmental body to obtain information not in its possession. Open Records Decision Nos. 558 (1990), 499 (1988). You further state that the trustee's notes are not public information, and therefore, are not subject to the Act. Because you have not submitted the notes, we are unable to determine whether they are subject to the Act under section 552.002.

requested information should or should not be released). We have considered the exceptions you claim and the arguments of the requestor, and have reviewed the submitted information.

You represent that Document A consists of the legal advice of an attorney for the district to district officials. Section 552.107(1) excepts information that an attorney cannot disclose because of a duty to his client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107 excepts from public disclosure only “privileged information,” that is, information that reflects either confidential communications from the client to the attorney or the attorney’s legal advice or opinions; it does not apply to all client information held by a governmental body’s attorney. Open Records Decision No. 574 at 5 (1990). Upon review of your arguments and the submitted information, we conclude that Document A is covered by the attorney-client privilege, and is therefore excepted from disclosure under section 552.107(1). As section 552.107 is dispositive for this information, we do not address your claims under section 552.106 or 552.111 for Document A.

You further claim that Documents B and C are excepted from disclosure under section 552.116. Section 552.116 of the Government Code provides in relevant part:

(a) An audit working paper of an audit of the *state auditor or the auditor of a state agency or institution of higher education* as defined by Section 61.003, Education Code, is excepted from [required public disclosure]. If information in an audit working paper is also maintained in another record, that other record is not excepted from [required public disclosure] by this section.

Gov’t Code § 552.116(a) (emphasis added). You have submitted documents produced by the district’s auditor. Because the district is neither the state auditor nor the auditor of a state agency or institution of higher education, section 552.116 is inapplicable to the district. Furthermore, you have not adequately explained how the information constitutes an audit working paper of an auditor of a state agency. Accordingly, you may not withhold any of the information in Document B or C under section 552.116.

You also contend that Documents B and C are excepted under section 552.111. 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. *City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 364 (Tex. 2000); *Arlington Indep. Sch. Dist. v. Texas Attorney Gen.*, 37 S.W.3d 152 (Tex. App.--Austin 2001, no pet.). 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. ORD 615 at 5-6. Additionally, section 552.111 does not generally except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. *Arlington Indep. Sch. Dist.*, 37 S.W.3d at 160; ORD 615 at 4-5.

You explain that Document B reveals preliminary discussions between the district's auditor and district administrative officials regarding the conduct of the audit, which is a policy matter. You also state that Document C is an inter-agency communication concerning the audit, which should be excepted under the same rationale. However, after reviewing these documents, we conclude that they do not constitute internal communications consisting of advice, recommendations, and opinions. Therefore, none of the information in Document B or C is excepted from disclosure under section 552.111.

In summary, you may withhold Document A under section 552.107. You must release the remaining requested information.

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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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 "Kristen Bates". The signature is written in black ink and is positioned above the typed name.

Kristen Bates
Assistant Attorney General
Open Records Division

KAB/seg

Ref: ID# 160094

Enc. Submitted documents

c: Mr. Keith Wadsworth
6006 La Mesa
Lago Vista, Texas 78645
(w/o enclosures)