



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 24, 2009

Ms. Ylise Janssen
Senior School Law Attorney
Office of the General Counsel
Austin Independent School District
1111 West Sixth Street
Austin, Texas 78703-5338

OR2009-10297

Dear Ms. Janssen:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 350125.

The Austin Independent School District (the "district") received a request for the first and second draft of the 2009 district efficiency study.¹ You claim that the submitted information is excepted from disclosure under section 552.111 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially you inform this office that the first draft of the 2009 efficiency study was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2009-09340 (2009). In that ruling, we concluded that the district may withhold the first draft of the 2009 efficiency study under section 552.111 of the Government Code. As we have no indication the law, facts, and circumstances on which the prior ruling was based have changed, the district may continue to rely on that ruling as a previous determination and withhold the first draft of the 2009 efficiency study in accordance with Open Records Letter No. 2009-09340. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

¹We note that the district asked for and received clarification regarding this request. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

We will now address your argument against the disclosure of the submitted second draft of the 2009 efficiency study. Section 552.111 of the Government Code 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. This section incorporates the deliberative process privilege into the Act. Open Records Decision No. 647 at 5-6. The purpose of section 552.111 is to protect advice, opinion, and recommendation in the decisional process and to encourage open and frank discussion in the deliberative process. *See Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex.App.—San Antonio 1982, no writ); Open Records Decision No. 538 at 1-2 (1990).

In Open Records Decision No. 615 (1993), this office re-examined the statutory predecessor to section 552.111 in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.—Austin 1992, no writ). We determined that section 552.111 excepts from disclosure only those internal communications that consist of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. *See* Open Records Decision No. 615 at 5. A governmental body's policymaking functions do not encompass routine internal administrative or personnel matters, and disclosure of information about such matters will not inhibit free discussion of policy issues among agency personnel. *Id.*; *see also City of Garland v. Dallas Morning News*, 22 S.W.3d 351 (Tex. 2000) (section 552.111 not applicable to personnel-related communications that did not involve policymaking). A governmental body'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). 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. v. Tex. Attorney Gen.*, 37 S.W.3d 152 (Tex. App.—Austin 2001, no pet.); ORD 615 at 4-5.

This office has also concluded that a preliminary draft of a document that is intended for public release in its final form necessarily represents the drafter's advice, opinion, and recommendation with regard to the form and content of the final document, so as to be excepted from disclosure under section 552.111. *See* Open Records Decision No. 559 at 2 (1990) (applying statutory predecessor). Section 552.111 protects factual information in the draft that also will be included in the final version of the document. *See id.* at 2-3. Thus, section 552.111 encompasses the entire contents, including comments, underlining, deletions, and proofreading marks, of a preliminary draft of a policymaking document that will be released to the public in its final form. *See id.* at 2.

Section 552.111 can also encompass communications between a governmental body and a third party, including a consultant or other party with a privity of interest. *See* Open Records Decision No. 561 at 9 (1990) (section 552.111 encompasses communications with party with which governmental body has privity of interest or common deliberative process). For section 552.111 to apply, the governmental body must identify the third party and explain the nature of its relationship with the governmental body. Section 552.111 is not applicable to a communication between the governmental body and a third party unless the

governmental body establishes it has a privity of interest or common deliberative process with the third party. *See* ORD 561 at 9.

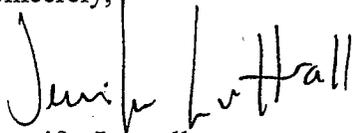
You state the district has authorized an efficiency study to determine whether the district is “operating at optimum efficiency and carrying out financial management principles in a manner that would (1) encourage increased efficiency and effectiveness of [the district] and maximize the amount of money available to improve education in the classroom; and [(2)] increase public confidence that [the district] is using money for public schools efficiently and wisely.” You state the district hired MGT of America, Inc. (“MGT”) to conduct the efficiency study. You state the submitted information consists of MGT’s second draft of the study. We understand the district has released the final report to the public. Based on your representations and our review of the information at issue, we agree that the submitted information consists of advice, opinions, and recommendations reflecting the policymaking processes of the district. Accordingly, the district may withhold the submitted information, consisting of the second draft of the 2009 efficiency study, under section 552.111 of the Government Code.

In summary, the district may continue to rely on Open Records Ruling No. 2009-09340 as a previous determination and withhold the first draft of the 2009 efficiency study in accordance with that ruling. The district may withhold the second draft of the 2009 efficiency study under section 552.111 of the Government Code.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/dls

Ref: ID# 350125

Enc. Submitted documents

c: Requestor
(w/o enclosures)