



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 30, 2009

Ms. Ylise Janssen
Senior School Law Attorney
Austin Independent School District
111 West 6th Street, Room A-240
Austin, Texas 78703-5338

OR2009-15464

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# 360132.

The Austin Independent School District (the "district") received a request for details of the district's administration's response to a specified study. You claim that a portion of 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.

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. This exception encompasses the deliberative process privilege. *See* Open Records Decision No. 615 at 2 (1993). The purpose of section 552.111 is to protect advice, opinions, and recommendations 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, 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 ORD 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). Further, section 552.111 does not protect facts and written observations of facts and events that are severable from advice, opinions, and recommendations. See ORD 615 at 5. But if factual information is so inextricably intertwined with material involving advice, opinions, or recommendations as to make severance of the factual data impractical, the factual information also may be withheld under section 552.111. See Open Records Decision No. 313 at 3 (1982).

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.

You state the information you have marked Exhibit B contains advice, opinions, and recommendations regarding policymaking matters. We understand this information is from a district employee to the district Superintendent's Senior Cabinet, which reports to the Board of Trustees. You also state that this information is part of the district's policymaking process. Based on your representations and our review, we find you have established that the deliberative process privilege is applicable to some of the submitted information. Therefore, the district may withhold the information we have marked under section 552.111 of the Government Code. However, the remaining information within Exhibit B consists of information that is purely factual in nature. You have failed to demonstrate, and the information does not reflect on its face, that this information consists of advice, recommendations, or opinions that pertain to policymaking. Accordingly, the district may not withhold the remaining information under the deliberative process privilege of section 552.111. As you raise no further exceptions to the disclosure of the remaining information within Exhibit B, it must be released.

We note that you have submitted information marked Exhibit D that is also responsive to the present request.¹ As you make no arguments against the disclosure of this information, we find it must also be released to the requestor.

In summary, the district may withhold the information we have marked in Exhibit B under section 552.111. The remaining information in Exhibits B and D must be released.

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, toll free, at (888) 672-6787.

Sincerely,



Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/eeg

Ref: ID# 360132

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹We note this information is also publicly available online.