



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 17, 2009

Mr. Burt C. Harrison, III  
Kazen, Meurer & Perez, LLP  
P.O. Box 6237  
Laredo, Texas 78042-6237

OR2009-17921

Dear Mr. Harrison:

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# 364559.

The Laredo Community College (the "college"), which you represent, received two requests from the same requestor for "[t]he first 'Tenure Document' written by [a named individual] and presented to the librarians to sign in their meeting on December 10, 2008." You claim that the submitted information is excepted from disclosure under section 552.111 of the Government Code.<sup>1</sup> In addition, you have notified an interested party of the request for information and of his right to submit comments to this office. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the exception you claim and reviewed the submitted information.

Initially, we note that in his first request the requestor stated that he did not seek "the revisions of this document made in January 2009." The college has submitted a Tenure Document that has been revised three times: January 13, 2009; May 25, 2009; and May 26, 2009. Therefore, the copy of the Tenure Document submitted by the college is not the version sought in the request. However, you have informed this office that the submitted

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<sup>1</sup>We note that although you raise section 552.101 of the Government Code, you make no arguments to support this exception. Therefore, we assume you have withdrawn your claim that this section applies to the submitted information.

Tenure Document is the only copy possessed by the college. Accordingly, we find the college to have made a good faith effort to relate the request to information held by the college. Thus, we will address your arguments for the submitted document. *See* Open Records Decision No. 561 at 8 (1990) (governmental body must make a good faith effort to relate a request to information held by the governmental body).

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 encompasses the deliberative process privilege. *See* Open Records Decision No. 615 at 2 (1993). In Open Records Decision No. 615, 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, and opinions 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. Tex. Attorney Gen.*, 37 S.W.3d 152 (Tex. App.—Austin 2001, no pet.). 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.).

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* ORD 615 at 5-6. However, 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, a 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). 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, opinion, or recommendation 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).

You state that the submitted information consists of the advice, opinions, and recommendations of college employees. You assert this information involves policymaking matters relating to the tenure policies of the college. Based upon your representations and our review, we agree that the submitted information consists of the advice, opinions, or recommendations of college employees regarding policymaking matters. Accordingly, the

college may withhold the submitted information 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](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,



Jonathan Miles  
Assistant Attorney General  
Open Records Division

JM/cc

Ref: ID# 364559

Enc. Submitted documents

c: Requestor  
(w/o enclosures)