



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 14, 2010

Ms. Ellen H. Spalding  
Feldman, Rogers, Morris & Grover, L.L.P.  
5718 Westheimer Road, Suite 1200  
Houston, Texas 77057

OR2010-00764

Dear Ms. Spalding:

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# 367216.

The Eanes Independent School District (the "district"), which you represent, received a request for bond "wish lists," or any communications reflecting the desires and priorities and/or wants or needs related to bond issues for future bonds, of the principals of each campus, including assistant and senior principals, as well as the WHS athletic staff, head and assistant coaches. You claim 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.

You inform us Exhibit B was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2009-17815 (2009). In Open Records Letter No. 2009-17815, we ruled that the district may withhold the draft documents under section 552.111. 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 Exhibit B, which consists of draft documents, in accordance with Open Records Letter No. 2009-17815. *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). We will address your arguments regarding Exhibit C, which has not been previously ruled upon.

You assert the information in Exhibit C is excepted from disclosure under the deliberative process privilege encompassed by section 552.111. *See* Open Records Decision No. 615 at 2 (1993). 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, 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). 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.

You state the documents in Exhibit C are lists of priorities or wishes compiled by district officials including campus principals and athletic staff for possible inclusion in a future bond election. You assert the documents in Exhibit C are drafts of policymaking documents that will be released to the public in their final forms. Based on your representations and our review, we find you have established the deliberative process privilege is applicable to one draft of a policymaking document which you state will be released in final form. This document, which we have marked, may be withheld in its entirety under section 552.111. You have also submitted documents consisting of e-mail communications, printed lists, handwritten lists, a proposal, and a letter from a parent group which contain information you indicate will be compiled into a policymaking draft which will be released in final form.

Based on your representations, the remaining documents in Exhibit C are not policymaking drafts but rather information that will be used to create a policymaking draft. Therefore, these documents may not be withheld as drafts of policymaking documents. However, you also argue these documents reveal the advice, opinions, and recommendations of district officials regarding what they perceive as district needs which are matters of broad scope that affect the district's policy mission. We agree some of the information in Exhibit C, which we have marked, constitutes advice, opinions, recommendations, or other material reflecting the policymaking processes of the district. However, you have not demonstrated how the remaining information at issue, which is purely factual information, consists of advice, opinions, or recommendations about a policymaking decision. Further, because section 552.111 only excepts the advice, recommendations, and opinions of employees and other individuals upon whom rests the responsibility for making policy decisions, the letter from a parent group does not fall under the deliberative process privilege. *See* ORD 615 at 5 (noting courts have said deliberative process privilege applies to government officials in connection with their official duties). Therefore, the district may not withhold the remaining information under section 552.111.

In summary, the district may continue to rely upon Open Records Letter No. 2009-17815 with respect to Exhibit B. The district may withhold the draft document and the marked information in Exhibit C under section 552.111 of the Government Code. The remaining information 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](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,



Jessica Eales  
Assistant Attorney General  
Open Records Division

JCE/eeg

Ref: ID# 367216

Enc. Submitted documents

c: Requestor  
(w/o enclosures)