



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 14, 2010

Ms. Lauren Kalisek
Lloyd, Gosselink Attorneys at Law
For North Texas Municipal Water District
816 Congress Avenue, Suite 1900
Austin, Texas 78701

OR2010-15653

Dear Ms. Kalisek:

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# 398062.

The North Texas Municipal Water District (the "district"), which you represent, received a request for 1) a list of the district's current customers, 2) the most current district policies for customers and any and all by-laws, 3) all documents and written communications between the district (employees and board members) and Lovejoy ISD ("Lovejoy") (employees and board members) relating to providing of waste water services to Lovejoy, 4) the agreement between the district and Lovejoy to provide waste water services, including all working drafts, and 5) copies of all e-mail server logs for the months of May, June, and July 2010. You claim the submitted information is excepted from disclosure under sections 552.107 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We note you have only submitted information responsive to the requests for communications between the district (employees and board members) and the agreement or any working drafts of the agreement between the district and Lovejoy to provide waste water services. Therefore, to the extent information responsive to the remaining portions of the request existed at the time the district received the request for information, we assume you have

released it to the requestor. If you have not released any such information, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302; Open Records Decision No. 664 (2000) (noting if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible under circumstances).

However, you inform us the district requested clarification regarding the request for copies of all e-mail server logs for the months of May, June, and July 2010. *See id.* § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information). It appears the district has not yet received a response to its request for clarification. Accordingly, the district has no obligation at this time to release any information that might be responsive to this request. But if the district receives clarification and wishes to withhold any of the information encompassed by the clarified request, then you must request another decision from this office. *See id.* §§ 552.301, .302; *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding when governmental entity, acting in good faith, requests clarification or narrowing of unclear or overbroad request for public information, ten-day period to request attorney general ruling is measured from date request is clarified or narrowed).

Section 552.111 excepts from public disclosure “[a]n 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. Section 552.111 encompasses the deliberative process privilege. *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 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. 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.

This office has also concluded 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 submitted e-mail is between district employees and the draft contract has only been reviewed internally by district employees and the district's attorney and has not been shared with any other third party, including Lovejoy. You state the submitted e-mail contains recommendations relating to the draft contract and the draft contract contains advice, recommendations, and revisions by the district's attorney. Furthermore, you state the e-mail and the draft contract not only address the provision of sewer service to Lovejoy, but also have a broader impact on the district's regional policies regarding wastewater service. You also indicate the draft contract is intended for public viewing in its final form. Accordingly, the district may withhold the requested information under section 552.111 of the Government Code.¹

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,



Sean Nottingham
Assistant Attorney General
Open Records Division

SN/eb

¹Because section 552.111 is dispositive, we do not reach your claim under section 552.107.

Ref: ID# 398062

Enc. Submitted documents

c: Requestor
(w/o enclosures)