



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 19, 2015

Mrs. Julie Chen Allen
General Counsel
Spring Independent School District
16717 Ella Boulevard
Houston, Texas 77090

OR2015-09653

Dear Ms. Allen:

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# 564231.

The Spring Independent School District (the "district") received a request for internal or external audits regarding any of seven specified categories of information during a specified time period. The district states it does not have information responsive to one of the specified categories.¹ The district claims the submitted information is excepted from disclosure under sections 552.111 and 552.116 of the Government Code.² We have considered the exceptions the district claims and reviewed the submitted information.

Section 552.116 of the Government Code provides the following:

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

²Although the district raises section 552.101 of the Government Code, the district makes no arguments to support this exception. Therefore, we assume the district has withdrawn its claim this section applies to the submitted information. *See Gov't Code* §§ 552.301, .302.

(a) An audit working paper of an audit of the state auditor or the auditor of a state agency, an institution of higher education as defined by Section 61.003, Education Code, a county, a municipality, a school district, a hospital district, or a joint board operating under Section 22.074, Transportation Code, including any audit relating to the criminal history background check of a public school employee, is excepted from the requirements of Section 552.021. If information in an audit working paper is also maintained in another record, that other record is not excepted from the requirements of Section 552.021 by this section.

(b) In this section:

(1) "Audit" means an audit authorized or required by a statute of this state or the United States, the charter or an ordinance of a municipality, an order of the commissioners court of a county, the bylaws adopted by or other action of the governing board of a hospital district, a resolution or other action of a board of trustees of a school district, including an audit by the district relating to the criminal history background check of a public school employee, or a resolution or other action of a joint board described by Subsection (a) and includes an investigation.

(2) "Audit working paper" includes all information, documentary or otherwise, prepared or maintained in conducting an audit or preparing an audit report, including:

(A) intra-agency and interagency communications; and

(B) drafts of the audit report or portions of those drafts.

Gov't Code § 552.116. The district states the submitted information constitutes audit working papers prepared by the Texas Education Agency's (the "TEA") Division of Program Monitoring and Interventions in conjunction with an authorized audit or investigation by the TEA into the educational programs of the district. The district explains the TEA has statutory jurisdiction to administer and monitor school district compliance with education programs required by federal or state law, including federal funding and state funding for these programs. *See* Educ. Code §§ 7.021(b)(1) (agency shall administer and monitor compliance with education programs). The district further states the audits were authorized by section 39.057(a)(4) of the Education Code. *See* Educ. Code § 39.057 (listing circumstances in which the commissioner shall authorize investigations). We note, however, section 552.116 is intended to protect the auditor's interests. The information at issue is maintained by the district, who we understand is the auditee. As the auditee, the district cannot assert section 552.116 in order to protect its own interest in withholding the

information. The district does not inform us the TEA seeks to withhold the submitted information under section 552.116. Accordingly, we conclude the district may not withhold the submitted information under section 552.116 of the Government Code.

Section 552.111 of the Government Code excepts from 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. 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, 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, writ ref’d n.r.e.); 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* 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. 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).

The district raises section 552.111 of the Government Code for ‘item 2.’ Upon review, we find the district may withhold the information we have marked under section 552.111 of the Government Code. However, we find the remaining information in ‘item 2’ is general administrative and factual information or does not pertain to policymaking. Thus, we find the district has failed to establish that any portion of the remaining information constitutes advice, opinions, recommendations, or other material reflecting the policymaking processes of the district. Accordingly, the district may not withhold any portion of the remaining information at issue under section 552.111 of the Government Code. As no further

exceptions against disclosure have been raised, the district must release the remaining information.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Rahat Huq
Assistant Attorney General
Open Records Division

RSH/dls

Ref: ID# 564231

Enc. Submitted documents

c: Requestor
(w/o enclosures)