



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 2, 2015

Ms. Traci Siebenlist
Counsel for the White River Municipal Water District
Crenshaw, Dupree & Milam, L.L.P.
P.O. Box 1499
Lubbock, Texas 79408-1499

OR2015-13434

Dear Ms. Siebenlist:

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# 570441.

The White River Municipal Water District (the "district"), which you represent, received a request for: (1) the current budget and budget amendments for 2014 and 2015 for the district, (2) e-mails and other written communication concerning net income and net loss of water sales from 2014 and 2015, and (3) letters to district management pertaining to the last five audits. The district indicates it will release some information to the requestor. The district claims the submitted information is excepted from disclosure under sections 552.111 and 552.116 of the Government Code. We have considered the exceptions the district claims and reviewed the submitted information.

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, 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. 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. *Arlington Indep. Sch. Dist. v. Tex. Attorney Gen.*, 37 S.W.3d 152 (Tex. App.—Austin 2001, no pet.); *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).

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 id.*

The district states the submitted information consists of policy recommendations contained within letters sent to the district by an outside public accountant consultant. The district explains this information is reflective of the deliberative process by which the district modifies its accounting practices and procedures. Thus, the district states the submitted information consists of advice, opinions, and recommendations of the consultant pertaining to the policymaking functions of the district. Further, the district informs us the communications at issue involve its outside public accountant consultant, with which we understand the district shares a privity of interest. Based on its representations and our review of the submitted information, we find the district has demonstrated portions of the submitted information, which we have marked, consist of advice, opinions, or recommendations on the policymaking matters of the district. Thus, the district may

withhold the marked information under section 552.111 of the Government Code. Upon review, however, we find the remaining information is general administrative and purely factual information or does not pertain to policymaking. Thus, we find the district has failed to show how the remaining information consists of advice, opinions, or recommendations on the policymaking matters of the district. Accordingly, the remaining information may not be withheld under section 552.111 of the Government Code.

Section 552.116 of the Government Code provides the following:

(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 consists of audit working papers that were prepared in conducting the annual required audit of the district. However, the district has not explained, or otherwise demonstrated, these audits were authorized or required by a statute of this state or the United States. *See id.* § 552.116(b)(1).

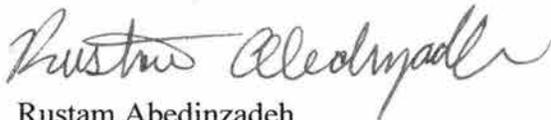
Upon review, we find the district has failed to demonstrate the information at issue consists of audit working papers excepted from disclosure under section 552.116. *See id.* Thus, the district may not withhold any of the remaining information under section 552.116 of the Government Code.

In summary, the district may withhold the information we have marked under section 552.111 of the Government Code. 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,



Rustam Abedinzadeh
Assistant Attorney General
Open Records Division

RA/dls

Ref: ID# 570441

Enc. Submitted documents

c: Requestor
(w/o enclosures)