



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 28, 1995

Mr. Ivan J. Mlachak  
Feldman & Associates  
12 Greenway Plaza, Suite 1202  
Houston, Texas 77046

OR95-1602

Dear Mr. Mlachak:

On behalf of your client, Fort Bend Independent School District, you request reconsideration of Open Records Letter No. 94-275 (1994). We have assigned your request for reconsideration ID# 27482.

Open Records Letter No. 94-275 dealt with a request for information concerning the district's health insurance benefits for employees. You submitted for review several documents that you claimed were excepted from required disclosure under the Open Records Act by section 552.111 of the Government Code, which excepts from public disclosure an "interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency."

In addressing your argument under section 552.111, Open Records Letter No. 94-275 relied upon Open Records Decision No. 615, which considered the interpretation of section 552.111, in light of the holding in *Texas Deptment of Pub. Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ). Open Records Decision No. 615 stated as follows:

We conclude that [section 552.111] excepts from disclosure only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the deliberative or policymaking processes of the governmental body at issue. . . . [W]e stress that in order to come within the [section 552.111] exception, information must be related to the *policymaking* functions of the governmental body. An agency's policymaking functions do not encompass routine internal administrative and

personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues.

Open Records Decision No. 615 at 5 (emphasis in original). Open Records Letter No. 94-275 concluded as follows:

A review of the documents you submitted to this office indicates that these documents concern the choosing of a health insurance carrier for the district. Selection of a health insurance carrier is a routine internal administrative matter and not part of the district's policymaking function. This information must therefore be released.

In your letter requesting reconsideration of Open Records Letter No. 94-275, you stated that the documents do not relate to "choosing of a health insurance carrier," but deal with the type of benefits that the district will offer under existing insurance policies to offset projected fiscal shortcomings in the district's health insurance plan.<sup>1</sup> You also contend that the scope of policymaking by a school district should be interpreted broadly enough that matters relating to benefits under a health insurance policy should be considered policymaking.

We have examined the documents that you submitted and agree with your description of their content. The documents also discuss reasons for the fiscal shortcomings and the process of deciding how to remedy them. In our opinion, the process of revising employees' health insurance coverage is not a "routine administrative matter," but a matter of considerable importance to the district that arises infrequently<sup>2</sup> and is given attention at the highest levels of the agency when it does.

We believe that the school district's decisions about the terms of employee benefits are within the policymaking functions of the district. The school district's primary governmental purpose is to educate students, and the district's decisions about the compensation and benefits of its employees are highly relevant to the purpose, and are not merely "routine internal administrative and personnel matters." Section 552.111 protects from required public disclosure the advice, recommendations, and opinions of

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<sup>1</sup>According to a document you have submitted, the district's plan is self-funded.

<sup>2</sup>"Routine" is defined by the dictionary as "a regular course of procedure," and a "habitual or mechanical performance of an established procedure." Webster's Ninth New Collegiate Dictionary 1027 (1990).

school district administrators regarding the health insurance benefits to be offered school district employees. Accordingly, we overrule Open Records Letter No. 94-275 (1994).

Facts and written observations of facts and events, when such information is separable from advice, opinion, or recommendation, may not be withheld under section 552.111 of the Government Code. Open Records Decision No. 574 (1990). We have marked the documents you have submitted to show which portions of the documents may be withheld pursuant to section 552.111.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay  
Assistant Attorney General  
Open Records Division

LRD/SLG/rho

Ref.: ID# 27482

Enclosures: Marked documents

cc: Mr. Naren R. Patel  
5602 Dairy Brook Cove  
Sugar Land, Texas 77479  
(w/o enclosures)