



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 7, 1997

Ms. Cynthia F. Calhoun
The Ronquillo Law Firm
1999 Bryan Street, Suite 3450
Dallas, Texas 75201

OR97-2473

Dear Ms. Calhoun:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 110278.

The Dallas Independent School District (the "district") received a request for "all documents and other materials turned over to external auditors regarding the renovation of the office of the Superintendent, Dr. Yvonne Gonzalez." Although you have released approximately 250 pages of documents to the requestor, you claim that the remaining document is excepted from disclosure under sections 552.107, 552.108, 552.111, and 552.022 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you claim that section 552.111 excepts the document from disclosure. Section 552.111 excepts "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. An agency's policymaking functions, however, do not encompass internal administrative or 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 (1993) at 5-6. In addition, section 552.111 does not except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. *Id.* at 4-5. After reviewing the submitted document, we have determined that it is purely factual and may not be withheld under this exception.

Next you claim that the document may be withheld under section 552.107. Section 552.107(1) excepts information that an attorney cannot disclose because of a duty to his client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107 excepts from public disclosure only "privileged information," that is, information that reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinions; it does not apply to all client information held by a governmental body's attorney. Open Records Decision No. 574 (1990). at 5. In addition, Section 552.107(1) does not except from disclosure a factual recounting of events. *Id.* The document at issue does not contain client confidences or attorney advice or opinion. Therefore, you may not withhold the document pursuant to section 552.107.

Next you contend that the document is excepted from disclosure by section 552.108. Section 552.108 provides in pertinent part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime

A non-law enforcement agency may withhold information under section 552.108 if the information relates to possible criminal conduct and has been forwarded to the appropriate law enforcement agency for investigation. *See* Attorney General Opinion MW-575 (1982); Open Records Decision No. 493 (1988). In this instance, you claim that the document was created and released to external auditors pursuant to an internal investigation. You do not indicate, however, whether the information relates to criminal conduct or whether the proper law enforcement agency wishes to withhold the document. *See, e.g.,* Open Records Decision Nos. 474 (1987), 372 (1983) (where incident involving allegedly criminal conduct is still under active investigation or prosecution, section 552.108 may be invoked by any proper custodian of information which relates to incident); Open Records Decision 586 (1991) (need of another governmental body to withhold requested information may provide compelling reason for nondisclosure under section 552.108). We do not believe that the exception applies to this document. Therefore, the district may not withhold the requested information under section 552.108 of the Government Code.

Finally, you assert that the document should be excepted under section 552.022. Section 552.022 of the Government Code provides that, *inter alia*, a "completed report" made for or by a governmental body is public information. However, this section does not imply that "incomplete" reports, or reports that have not been "accepted" by a governmental body, are automatically excepted from required disclosure. Open Records Decision No. 460 (1987) (interpreting predecessor statute). The applicable test for required disclosure is twofold: whether the requested information is collected, assembled, or maintained by a

governmental body, and, if so, whether the information falls within one of the specific exceptions to disclosure listed under subchapter C of Chapter 552. *Id.* In this instance, you have failed to demonstrate that any of the exceptions to disclosure apply. Therefore, we conclude that the document must be released to the requestor.

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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/alg

Ref.: ID# 110278

Enclosures: Submitted documents

cc: Ms. Jill Davis
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(w/o enclosures)