



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 9, 1997

Mr. Philip S. Haag
Hutcheson & Grundy, L.L.P.
Franklin Plaza
111 Congress Avenue, Suite 2700
Austin, Texas 78701-4043

OR97-2698

Dear Mr. Haag:

You represent the Northwest Travis County Municipal Utility District No. 1 (the "district"). On behalf of the district, you have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your requests were assigned ID#s 110777 and 111214.¹

The first requestor has made a request for "[c]opies of any and all correspondence, including but not limited to maps, memos and letters, that discuss the sale of the MUD's wastewater system and lease," and "[a]ny and all information that would answer," certain specified questions. The second requestor, the City of Austin, has requested various categories of information pertaining to the district during the 1996 through 1998 time period. In response to the requests, you have submitted the information at issue, which you contend is responsive. You inform us that you are releasing some of the requested information. However, you claim that 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.

Initially, we note that in your request for a ruling, you notified this office that certain records do not exist. You also assert that the district "does not have a right of access to documentation, that is responsive to many of [the requestors'] requests." Furthermore, you contend that some of the requestors' "requests may be construed to be asking questions or that the District perform legal research." In response to the second requestor's requests, you further assert that the district is not required to provide the requestor with the information in the format that he has requested.²

¹We have combined the two related files, because both requestors seek information that you contend is related, for which you have raised sections 552.107 and 552.111 as applicable exceptions.

²Generally, a governmental body has no obligation to compile or prepare new information in response to an open records request. Open Records Decision Nos. 605 (1992), 574 (1990), 464 (1987). If in fact the
(continued...)

First, we address your contention that certain records do not exist. We note that chapter 552 does not apply to information that does not exist. *See* Open Records Decision No. 555 (1990); *see also* Open Records Decision Nos. 452 (1986) (document is not within the purview of Act if, when governmental body receives request for it, the document does not exist). Nor does chapter 552 require a governmental body to prepare new information in response to a request. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.--San Antonio, 1978, writ *dism'd*); *see also* Open Records Decision No. 87 (1975).

We next consider your assertion that the district does not have "a right of access" to some of the requested information. Section 552.002(a) defines the term "public information" to include information that is "collected, assembled, or maintained . . . (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it." Gov't Code § 552.002(a) (emphasis added). Generally, the act does not require a governmental body to obtain information not in its possession from another entity.³ *See* Open Records Decision Nos. 561 (1990), 558 (1990), 445 (1986). Based on your assertions, we conclude that to the extent that the requested information is not in the possession or control of the district, section 552.002 does not require compliance with that portion of the request.⁴

Before we consider the application of sections 552.107 and 552.111 to the submitted records, we consider the portion of the open records request which may require the district to answer factual questions or perform legal research. The Open Records Act does not require a governmental body to answer factual questions or perform legal research. Open Records Decision Nos. 561 (1990), 555 (1990), 379 (1983), 347 (1982). However, a governmental body does have a duty to make a good faith effort to relate a request for information to information the governmental body holds. Open Records Decision No. 561 (1990) at 8. If the governmental body holds information from which the requested information can be obtained, it must provide that information to the requestor unless it is otherwise excepted from disclosure. Open Records Decision Nos. 561 (1990), 555 (1990), 379 (1983), 347 (1982). Therefore, we note that to the extent that the requestor's request requires the district to answer questions or perform legal research, the district is not required to comply.

²(...continued)

request requires programming or manipulation of existing data, then the district must notify the requestor of that fact in writing, in accordance with subsections (a) and (b) of section 552.231, thereby giving the requestor the information he needs in order to decide how to proceed with his request. You should provide the requestor a description of the form in which the information is available. However, it does not appear that the requestor is asking the district to compile or prepare new information.

³However, a governmental body has a duty to obtain requested information from another entity if that entity holds the information on behalf of that governmental body. *See* Open Records Decision No. 534 (1989) at 2.

⁴As a courtesy to the requestor, if the district has knowledge of where the requested information may be obtained, the district could refer the requestor to that source.

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.

Generally, 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. Yet, where a document is a genuine preliminary draft that has been released or is intended for release in final form, factual information in that draft which also appears in a released or releasable final version is excepted from disclosure by section 552.111. Open Records Decision No. 559 (1990). However, severable factual information appearing in the draft but not in the final version is not excepted by section 552.111. *Id.*

We have reviewed the submitted information, and conclude that section 552.111 excepts the submitted information from required public disclosure. As we have resolved this matter under section 552.111, we need not address your other claimed exception.

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,



Sam Haddad
Assistant Attorney General
Open Records Division

SH/rho

Ref.: ID#s 110777 and 111214

Enclosures: Submitted documents

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