



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 6, 1998

Ms. Debra M. Esterak
Feldman & Rogers, L.L.P.
12 Greenway Plaza, Suite 1202
Houston, Texas 77046

OR98-1580

Dear Ms. Esterak:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 116530.

The Clear Creek Independent School District (the "school district") received a request for the Financial Management Audit Report that KPMG Peat Marwick, L.L.P. ("Peat Marwick") wrote for the school district, the draft form of the audit report that was submitted to the school board, and any questions and concerns that the school board trustees submitted to Peat Marwick representatives. You inform us that the audit report is still in draft form and has not been finalized. You also inform us that "no written questions or concerns were presented by the Board to Peat Marwick." Thus, the only document at issue is the draft audit report, which you claim is excepted from disclosure under section 552.111 of the Government Code. We have considered the exception you claim and have reviewed the document at issue.

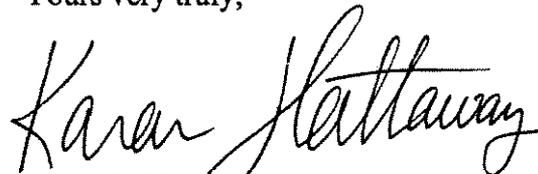
Section 552.111 excepts from disclosure "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." This exception applies not only to a governmental body's internal memoranda, but also to memoranda prepared for a governmental body by its outside consultant. Open Records Decision Nos. 462 (1987) at 14, 298 (1981) at 2. 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. Section 552.111 does not generally except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. Open Records Decision No. 615 (1993) at 4-5.

The preliminary draft of a policymaking document that has been released or is intended for release in a final form is excepted from disclosure in its entirety under section 552.111 because such a draft necessarily represents the advice, recommendations, or opinions of the drafter as to the form and content of the final document. Open Records Decision No. 559 (1990). The draft itself, including comments, underlining, deletions, and proofreading marks, is excepted from disclosure by section 552.111. *Id.* Purely factual matter, where severable, must generally be released. *Id.* However, when such factual matter is contained in the final version of the document, the release of the final version satisfies this requirement. *Id.*

You indicate that the audit report is still in draft form, but the final report, expected to issue "within a matter of weeks," will be released to the public. The draft audit report contains advice, opinions, and recommendations reflecting the policymaking processes of the school district. Under these circumstances, we conclude that the school district may withhold the draft audit report from disclosure in its entirety under section 552.111 in anticipation of releasing the audit report in final form.

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 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/mjc

Ref: ID# 116530

Enclosures: Submitted documents

cc: Ms. Paula Tomasi
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Nassau Bay, Texas 77058
(w/o enclosures)