Office of the Attorney General • State of Texas
John Cornyn

July 31, 2000

Mr. Robert E. Luna
Law Offices of Robert E. Luna, P.C.
4411 North Central Expressway
Dallas, Texas 75205

OR2000-2903

Dear Mr. Luna:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 137676.

The Carrollton-Farmers Branch Independent School District (the "district"), which you represent, received a request for various information regarding the selection of an elementary school site. You explain that you have released to the requestor a large portion of the requested information, but claim that some of the requested information is excepted from disclosure under section 552.111 of the Government Code. You have submitted the information you wish to withhold and have labeled this information as exhibits B-E. We have considered the exception you claim and reviewed the submitted information.

Exhibit B consists of a letter from the district's Executive Director of Student Services to the President of the Board of Trustees of the district. You explain that the letter sets forth considerations relevant to the proposed revision of the intra-district student transfer policy. You argue that the letter contains advice and opinions and, therefore, is protected from disclosure under section 552.111.

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 Dep't of Pub. 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 because disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. *See* Open Records Decision No. 615 at 5 (1993). Additionally, section 552.111 does not except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. *See id.*

We conclude the letter contained in exhibit B is an internal communication consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. Thus, you may withhold the letter pursuant to section 552.111.

Next, you state that exhibits C, D, and E are documents concerning a potential school site, including traffic and environmental studies conducted for the district by independent consultants. You explain that the documents have not been released in their final form, as additional information is required in order to finalize the studies. Therefore, you contend that the documents are protected pursuant to section 552.111 until they are in their final form.

In Open Records Decision No. 559 at 2 (1990), this office held that "where a document is genuinely a preliminary draft of a document that has been released or is intended for release in a final form, the draft necessarily represents the advice, opinion, and recommendation of the drafter as to the form and content of the final document." As such, the document may be withheld. However, underlying factual information, where severable, must be released. *Id.* When such factual matter is contained in the final version of the document, however, the release of the final version will satisfy this requirement.

In regards to exhibits D and E, assuming that these documents are in fact to be released to the public in their final form, and assuming the final reports contain the factual assertions contained in the draft versions, we conclude that the district may withhold the draft reports in their entirety pursuant to section 552.111. Exhibit C is an internal communication which consists of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body; thus, the district may withhold this document under section 552.111 also.

In summary, exhibits B, C, D, and E may be withheld from public disclosure pursuant to section 552.111.

This letter ruling is limited to the particular records at issue in this request and to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited

from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

Julie Reagan Watson

Julie Reagan Watson
Assistant Attorney General
Open Records Division

JRW/pr

Ref: ID# 137676

Encl. Submitted documents

cc: Mr. John F. Boyle, Jr.
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(w/o enclosures)