



August 24, 2000

Mr. Edward R. Smith, Jr.  
Special Assistant to the Superintendent  
Chief, Intergovernmental Relations Department  
Dallas Independent School District  
3700 Ross Avenue, Box 74  
Dallas, Texas 75204-5491

OR2000-3236

Dear Mr. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 138410.

The Dallas Independent School District (the "district") received a request for any and all memos that William Coleman, the chief operations officer, has written about recommended cuts for the 2000-01 budget. You claim that the requested information is excepted from disclosure under section 552.111 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.111 excepts from disclosure "an interagency or intra agency 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 do not encompass internal administrative or personnel matters, and disclosure of information about such matters will not inhibit free discussion of policy issues among agency personnel. Open Records Decision No. 615 at 5-6 (1993); *see also Garland v. Dallas Morning News*, 43 Tex. Sup. Ct. J. 303 (Jan. 13, 2000) (personnel communications not relating to agency's policymaking not excepted from public disclosure pursuant to section 552.111). An agency's policymaking functions do include, however, administrative and personnel matters of broad scope that affect the governmental body's policy mission. *See* Open Records Decision No. 631 (1995). In addition, section 552.111 does not protect facts and written observation of facts and events that are severable from

advice, opinions, and recommendation. Open Records Decision No. 615 at 4-5 (1993). If, however, the factual information is so inextricably intertwined with material involving advice, opinion, or recommendation as to make separation of the factual data impractical, that information may be withheld under section 552.111. Open Records Decision No. 313 (1982).

In this instance, you explain that Mr. Coleman, as the chief financial officer, is responsible for providing advice and for making recommendations to the district's superintendent on budgetary matters. You state the superintendent is responsible for presenting a budget to the Board of Education (the "Board") for approval. You assert that providing a budget that establishes the fiscal management guideline for the district allows the district to fulfill its mission of educating the district's students. You state the Board will give the final approval for the budget in August. You state that the submitted information responsive to the request consists of documents containing Mr. Coleman's fiscal recommendations to the Board. You state that if the district were to release these recommendations prior to the Board's vote approving the budget, there would not be the open discussion that section 552.111 encourages. Based on your assertions and our review of the submitted documents, we find that the submitted documents are recommendations that reflect the district's policy making process. Therefore, we find that the submitted documents are excepted from public disclosure under section 552.111 of the Government Code. Accordingly, the district may withhold the submitted documents in their entirety pursuant to section 552.111.

This letter ruling is limited to the particular records at issue in this request and limited 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,



Noelle C. Letteri  
Assistant Attorney General  
Open Records Division

NCL/pr

Ref: ID# 138410

Encl. Submitted documents

cc: Ms. Linda K. Wertheimer  
The Dallas Morning News  
P.O. Box 655237  
Dallas, Texas 75265  
(w/o enclosures)