OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS
JOHN CORNYN

December 4, 2000

Mr. Mike Atkins
McMahon, Tidwell, Hansen, Atkins & Peacock, P.C.
Attorneys at Law
P.O. Box 1311
Odessa, Texas 79760

OR2000-4587

Dear Mr. Atkins:

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# 141768.

The Ector County Independent School District (the "district"), which you represent, received a request for information relating to the district's proposed bond issue. You claim that the requested information is excepted from disclosure under sections 552.105 and 552.111 of the Government Code. You have submitted responsive information to this office for review, identified under Tab A, Tab, B, and Tab C. You relate that the information submitted under Tab C was created subsequent to the current request for information. We have considered the exceptions you claim and reviewed the submitted information.

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 internal memoranda, but also to memoranda prepared by consultants of a governmental body. Open Records Decision Nos. 462 at 14 (1987), 298 at 2 (1981). The preliminary draft of a policymaking document that has been released or is intended for release in 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 at 2 (1990). You assert that the submitted materials "represent a preliminary draft that will ultimately be released in a final form." You relate that this information was provided to a Steering Committee, the function of which is "to explore various scenarios pertaining to possible future bond issues in connection with future construction." You also relate that, with the exception of information which would tend to identify parcels of land which the district contemplates acquiring, this information has now

been presented in an open meeting and made available to the public. Based on your representations, we conclude that the submitted materials are a draft of a report that was intended for release in final form. Therefore, the submitted materials may be withheld under section 552.111 of the Government Code. As this discussion disposes of this request, your arguments raised under other sections of the Government Code will not be addressed.

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).

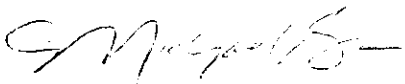
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

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,



Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/er

Ref: ID# 141768

Encl: Submitted documents

cc: Mr. Jeff Stevens
Odessa American
222 East 4th Street
Odessa, Texas 79761
(w/o enclosures)