



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

June 24, 2003

Mr. Anthony S. Corbett
Freeman & Corbett, L.L.P.
2304 Hancock, Suite 6
Austin, Texas 78756

OR2003-4328

Dear Mr. Corbett:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 183186.

The Brushy Creek Municipal Utility District (the "district"), which you represent, received the following request for information relating to agenda items from the March 27, 2003 meeting of the district board of directors:

Request an opportunity to inspect and select for copying:

- A. All information available relating to "Land and Easement Acquisition"
- B. All information available relating to "Additional Budget Authorization for Environmental work"
- C. All information available relating to "Status Update"
- D. All information available relating to "Other actions related thereto"¹

¹You designate the present request for information by the district identification number 040803.02.

You state that the district has previously provided some of the responsive information to the requestor, and you indicate that the district will provide certification of that fact to the requestor in accordance with section 552.232 of the Government Code. *See Gov't Code § 552.232(b)* (governmental body shall certify to the requestor that all or part of the requested information, as applicable, was previously furnished or made available to the requestor). You claim that the submitted information is excepted from disclosure under sections 552.105, 552.111, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.105 of the Government Code excepts from disclosure information relating to:

- (1) the location of real or personal property for a public purpose prior to public announcement of the project; or
- (2) appraisals or purchase price of real or personal property for a public purpose prior to the formal award of contracts for the property.

Section 552.105 was designed to protect a governmental body's planning and negotiating position with respect to particular transactions. Open Records Decision No. 564 at 2 (1990). This exception protects information relating to the location, appraisals, and purchase price of property only until the transaction is either completed or aborted. Open Records Decision Nos. 357 at 3 (1982), 310 at 2 (1982). You state that some of the submitted information, which you have marked, relates to the location of real property that the district is currently considering acquiring for a water line and treatment plant project. You further explain that the district has not yet secured the parcels of property or easement interests related to the project, and that the district has not announced to the public the specific location of the proposed pipeline route or water treatment plant and related facilities. You also assert that release of this information "would harm the District in connection with its negotiations for purchase of the real property interests from the landowners in question, and from other landowners." Based upon your representations and our review of the information in question, we agree that portions of the submitted information are excepted from disclosure under section 552.105. We have marked information that the district may withhold pursuant to section 552.105 of the Government Code.

Section 552.111 of the Government Code 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." 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. Open Records Decision No. 615 at 5-6 (1993). 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). 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 at 5-6 (1993). Additionally, section 552.111 does not generally except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. *Arlington Indep. Sch. Dist.*, 37 S.W.3d at 160; Open Records Decision No. 615 at 4-5. We note that section 552.111 is applicable to communications that involve a governmental body's consultants. See Open Records Decision Nos. 631 at 2 (1995) (section 552.111 encompasses information created for governmental body by outside consultant acting at governmental body's request and performing task that is within governmental body's authority), 563 at 5-6 (1990) (private entity engaged in joint project with governmental body may be regarded as its consultant). Section 552.111 is not applicable, however, to communications with a party with which the governmental body has no privity of interest or common deliberative process. See Open Records Decision No. 561 at 9 (1990). You state that the information you seek to withhold under section 552.111 relates to policy deliberations among district staff and consultants concerning the district's water supply planning and development. Upon review, we agree that some of the submitted documents contain advice, recommendations, opinions, and other material reflecting the policymaking processes of the district. We have marked the information that the district may withhold pursuant to section 552.111 of the Government Code. However, the remainder of the information you seek to withhold under section 552.111 does not consist of advice, opinion, or recommendations regarding district policymaking matters and may not be withheld under section 552.111.

Finally, the submitted information contains e-mail addresses of members of the public. Section 552.137 of the Government Code provides:

- (a) An e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.
- (b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.

Unless the relevant individuals have affirmatively consented to the release of their e-mail addresses, the district must withhold the e-mail addresses that we have marked under section 552.137 of the Government Code.

In summary, we have marked information that the district may withhold pursuant to sections 552.105 and 552.111 of the Government Code. The marked e-mail addresses must be withheld under section 552.137 of the Government Code. The remainder of the submitted information must be released to the requestor.

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 Dep't of Pub. 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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,

A handwritten signature in black ink, appearing to read "D. Saldivar", with a long horizontal flourish extending to the right.

David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/seg

Ref: ID# 183186

Enc: Submitted documents

c: Mr. John C. McLemore
8400 Cornerwood Drive
Austin, Texas 78717
(w/o enclosures)