



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 7, 2005

Ms. Ellen B. Huchital  
McGinnis, Lockridge & Kilgore  
1221 McKinney Street, Suite 3200  
Houston, Texas 77010

OR2005-08159

Dear Ms. Huchital:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 231830.

The Eanes Independent School District (the "district"), which you represent, received a request for any information pertaining to the use of personal digital cameras while reviewing documents under the Act. You claim that the submitted information is excepted from disclosure under sections 552.103, 552.107, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also reviewed comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

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." Gov't Code § 552.111. 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, and opinions reflecting the policymaking processes of the governmental body. *See City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 364 (Tex. 2000); *see also Arlington Indep. Sch. Dist. v. Tex. Att'y Gen.*, 37 S.W.3d 152 (Tex. App.—Austin, 2001, no pet.). The purpose of section 552.111 is "to protect from public

disclosure advice and opinions on policy matters and to encourage frank and open discussion within the agency in connection with its decision-making processes.” *Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.—San Antonio 1982, writ ref’d n.r.e.). An agency’s policymaking functions 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. See Open Records Decision No. 615 at 5-6 (1993). In addition, information created for a governmental body by an outside consultant acting in an official capacity on behalf of the governmental body is encompassed by section 552.111. See Open Records Decision No. 462 (1987). Further, a 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. See Open Records Decision No. 559 at 2 (1990).

You state that the submitted information constitutes draft documents, which the district intends to release in final form. Based on your representations and our review of this information, we agree that the information constitutes draft documents which reflect the policymaking processes of the district. Accordingly, we conclude that the district may withhold the submitted information in its entirety pursuant to section 552.111 of the Government Code. As our ruling is dispositive, we need not address your remaining arguments.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the

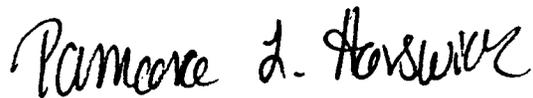
requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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); *Tex. 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 Office of the Attorney General 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,



Tamara L. Harswick  
Assistant Attorney General  
Open Records Division

TLH/sdk

Ref: ID# 213830

Enc. Submitted documents

c: Ms. Susan Bushart  
402 Inwood Road  
Austin, Texas 78746  
(w/o enclosures)