



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 10, 2008

Mr. David B. Hodgins
Mr. Douglas L. Hibbard
Bracewell & Guiliani
711 Louisiana Street, Suite 2300
Houston, Texas 77002-2770

OR2008-09435

Dear Mr. Hodgins and Mr. Hibbard:

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# 315368.

The Pasadena Independent School District (the "district"), which you represent, received a request for five categories of information pertaining generally to the district's financial affairs and attendance records for specified time periods. You state that a portion of the requested information has been released to the requestor. You claim that the information responsive to the portion of the request pertaining to a new bond initiative under consideration by the district is excepted from disclosure under section 552.111 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also considered comments submitted by the requestor.¹ *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

¹The requestor asks this office to determine whether the district violated the Open Meetings Act. Making such a ruling would require investigation and resolving questions beyond the scope of this division's authority in issuing open records decisions. *See* Gov't Code § 552.301(a) (division's authority is limited to determining whether requested information falls within an exception to disclosure). Thus, this ruling does not address this issue raised by the requestor.

Initially, we must address the requestor's contention that Exhibit B is a completed report subject to required public disclosure under section 552.022(a)(1) of the Government Code. *See id.* § 552.022(a)(1). The district states that Exhibit B is a preliminary report that has not been finalized. Accordingly, based on the representations of the district and our review, we conclude that Exhibit B is not a completed report subject to section 552.022(a)(1).

The requestor also asserts that Exhibit B is subject to section 552.022(a)(5). Section 552.022(a)(5) provides that on completion of an estimate, "all working papers, research material, and information used to estimate the need for or expenditure of public funds or taxes by a governmental body" are public information and not excepted from disclosure unless made confidential by law. *Id.* § 552.022(a)(5). The district states that Exhibit B pertains to the bond election that is under consideration and sets forth the "district's projected long-range debt plan under several possible scenarios." Thus, the information in Exhibit B does not estimate the need for or expenditure of public funds or taxes by the district, but rather estimates the structure of potential district debt under differing scenarios. Accordingly, we conclude that Exhibit B is not subject to section 552.022(a)(5).

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." *Id.* § 552.111. This exception encompasses the deliberative process privilege. *See* Open Records Decision No. 615 at 2 (1993). The purpose of section 552.111 is to protect advice, opinion, and recommendation in the decisional process and to encourage open and frank discussion in the deliberative process. *See Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.—San Antonio 1982, no writ); Open Records Decision No. 538 at 1-2 (1990). In Open Records Decision No. 615 (1993), this office re-examined the statutory predecessor to section 552.111 in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.—Austin 1992, no writ). We determined that section 552.111 excepts from disclosure only those internal communications that consist of advice, recommendations, and opinions that reflect the policymaking processes of the governmental body. *See* Open Records Decision No. 615 at 5. A governmental body's policymaking functions do not encompass routine internal administrative or personnel matters, and disclosure of information about such matters will not inhibit free discussion of policy issues among agency personnel. *Id.*; *see also City of Garland v. The Dallas Morning News*, 22 S.W.3d 351 (Tex. 2000) (Gov't Code § 552.111 not applicable to personnel-related communications that did not involve policymaking). A governmental body's policymaking functions do include administrative and personnel matters of broad scope that affect the governmental body's policy mission. *See* Open Records Decision No. 631 at 3 (1995). Moreover, section 552.111 does not protect facts and written observations of facts and events that are severable from advice, opinions, and recommendations. *See* ORD No. 615 at 5. But if factual information is so inextricably intertwined with material involving advice, opinion, or recommendation as to make severance of the factual data impractical, the factual information also may be withheld under section 552.111. *See* Open Records Decision No. 313 at 3 (1982).

This office also has concluded that a preliminary draft of a document that is intended for public release in its final form necessarily represents the drafter's advice, opinion, and recommendation with regard to the form and content of the final document, so as to be excepted from disclosure under section 552.111. *See* Open Records Decision No. 559 at 2 (1990) (applying statutory predecessor). Section 552.111 protects factual information in the draft that also will be included in the final version of the document. *See id.* at 2-3. Thus, section 552.111 encompasses the entire contents, including comments, underlining, deletions, and proofreading marks, of a preliminary draft of a policymaking document that will be released to the public in its final form. *See id.* at 2.

You state that Exhibit A, which consists of a time-line with proposals and ideas to the board regarding the bond election, pertains to the district's "decision-making process with regard to planning the bond initiative." After reviewing your arguments and Exhibit A, we agree that Exhibit A is a draft of a policymaking document. However, you do not inform us if the district intends to release this time-line to the public in its final form. Therefore, if the time-line will be released to the public in its final form, then Exhibit A may be withheld in its entirety under section 552.111. However, if the district does not intend to release a final version of the time-line to the public, then only the information we have marked that consists of advice, opinion, or recommendations may be withheld under section 552.111. The rest of Exhibit A must be released.

Section 552.111 also encompasses communications between a governmental body and a third-party consultant that contain advice, opinion, or recommendation on a policy making issue of the governmental body. *See* Open Records Decision Nos. 631 at 2 (1995) (section 552.111 encompasses information created for a governmental body by outside consultant acting at governmental body's request and performing task that is within governmental body's authority), 561 at 9 (1990) (section 552.111 encompasses communications with party with which governmental body has privity of interest or common deliberative process), 462 at 14 (1987) (section 552.111 applies to memoranda prepared by governmental body's consultants). For section 552.111 to apply, the governmental body must identify the third party and explain the nature of its relationship with the governmental body.

You explain that the district has retained RBC Capital Markets, a third party consultant, to assist the district with projecting the financial impact of various long term debt planning scenarios in connection with the potential bond initiative. You also state that Exhibit B, which was created by RBC Capital Markets, is a draft of a policymaking document pertaining to the planning of the potential bond initiative. After reviewing your arguments and Exhibit B, we agree that Exhibit B is a draft of a policymaking document. You state that the district will release the final version of Exhibit B to the public in its final form. Based upon your representations and our review, we agree that the district may withhold Exhibit B in its entirety under section 552.111 of the Government Code.

Finally, the requestor contends that "the superintendent has shared the information in documents A and B" to members of the public. The Act does not permit the selective disclosure of documents. *See id.* §§ 552.007(b), .021; Open Records Decision No. 463 at 1-2 (1987). If a governmental body voluntarily releases a document to a member of the public, such document may not later be withheld, unless its disclosure is confidential by law. *See* Gov't Code § 552.007(a). Selective disclosure only applies if the actual documents at issue have been released. It does not apply if only information which may be contained in those documents has been released. Section 552.111 of the Government Code is a discretionary exception to disclosure and does not make information confidential by law. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 470 at 7 (1987) (statutory predecessor to section 552.111 subject to waiver). Thus, to the extent that the submitted exhibits have been released to the public, the exhibits may not now be withheld from the requestor under section 552.111 and must be released. To the extent that the exhibits have not been released to the public, they may be withheld in accordance with our ruling under section 552.111.

In summary, to the extent that the submitted exhibits have been released to the public, the exhibits must be released. To the extent that the information in question has not been released to the public, the district may withhold Exhibit B under section 552.111 of the Government Code. If the time-line will be released to the public in its final form, then Exhibit A may be withheld in its entirety under section 552.111. If the district does not intend to release a final version of the time-line to the public, then only the information that we have marked may be withheld, and the rest of Exhibit A must be released.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). If the governmental body does not file suit over 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 challenge 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 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. 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,



Laura E. Ream
Assistant Attorney General
Open Records Division

LER/jb

Ref: ID# 315368

Enc. Submitted documents

c: Ms. Doris Barnes
4406 Sao Paulo
Pasadena, Texas 77504
(w/o enclosures)