



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 24, 2008

Ms. Ylise Janssen
Senior School Law Attorney
Austin Independent School District
1111 West Sixth Street, Suite A240
Austin, Texas 78703-5338

OR2008-16101

Dear Ms. Janssen:

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# 328790.

The Austin Independent School District (the "district") received a request for all communications between district board members or employees and the Gibson Group pertaining to a specified budget audit. You state that the district has made some of the requested information available to the requestor. You claim that portions of the submitted information are excepted from disclosure under section 552.111 of the Government Code.¹ We have considered the exception 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." Gov't Code § 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

¹Although you initially raised section 552.116 of the Government Code as an exception to disclosure of the requested information, you have provided no arguments regarding the applicability of that section. Accordingly, we assume that you no longer urge that exception. *See* Gov't Code §§ 552.301(e)(1)(A), .302.

at 1-2 (1990). In Open Records Decision No. 615, 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* ORD 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).

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 the Gibson Group, a third party consultant, to assist the district with its budget-making process and maximizing the district's efficiency. You state that the information you have bracketed in Exhibits C and D consists of the advice, opinions, and recommendations of the district and the district's consultant. You also state that these documents involve policymaking matters relating to the creation of the district's budget. Upon review of your representations and the information at issue, we agree that some of the information you seek to withhold consists of the advice, opinions, or recommendations of the district or the district's consultant on policy matters concerning the district's budget. Therefore, the district may withhold the information we have marked in Exhibits C and D under section 552.111. However, the remaining information that you have bracketed in Exhibits C and D is purely factual information. Therefore, this information does not represent advice, recommendations, or opinions reflecting the policymaking processes of the district, and it may not be withheld under section 552.111.

You also seek to withhold a spreadsheet pertaining to the district's health care plan under section 552.111. You state that release of this spreadsheet would "inhibit frank and open discussion and consideration of data involving employee wellness or lack thereof leading to

the determination of insurance premiums for [district] employees.” However, you have not explained how the submitted spreadsheet in Exhibit C reveals the advice, opinions, or recommendations of the district or its consultant. Accordingly, the district may not withhold the submitted spreadsheet under section 552.111.

In summary, the district may withhold the information we have marked in Exhibits C and D under section 552.111 of the Government Code. The remaining submitted information, including the spreadsheet pertaining to the district’s health care plan, 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 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,

A handwritten signature in cursive script that reads "Laura E. Ream".

Laura E. Ream
Assistant Attorney General
Open Records Division

LER/jb

Ref: ID# 328790

Enc. Submitted documents

c: Requestor
(w/o enclosures)