



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 24, 2009

Ms. Maria Smith
North Texas Tollway Authority
P.O. Box 260729
Plano, Texas 75026

OR2009-16726

Dear Ms. Smith:

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# 362365.

The North Texas Tollway Authority (the "authority") received a request for a copy of a specified Vault Operations Investigative Report. You claim that the requested information 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 received and considered comments from the requestor's representative. *See Gov't Code* § 552.304 (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. This section incorporates the deliberative process privilege into the Act. *Open Records Decision No. 647 at 5-6.* 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, opinions, and other material reflecting 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. Dallas Morning News*, 22 S.W.3d 351 (Tex. 2000) (section 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). 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. v. Tex. Attorney Gen.*, 37 S.W.3d 152 (Tex. App.—Austin 2001, no pet.); ORD 615 at 4-5.

This office has also 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 the submitted information consists of a draft report prepared by the authority's Human Resources Department and submitted to the authority's Executive Director which contains the "opinions and recommendations of [authority] staff regarding management of the Vault Department, [the requestor's] employment with the [authority,] and whether those involved in supervision of [the requestor] should be subject to disciplinary response[.]" You assert this draft report reflects the advice, recommendations, and opinions of the drafter regarding authority management policy and accountability. However, upon review of the submitted information, we find that it consists of routine administrative or personnel information. You have not explained how the draft report pertains to administrative and personnel matters of broad scope that affect the authority's policy mission. Accordingly, we find you have failed to demonstrate, and the information does not reflect on its face, that this information consists of advice, recommendations, or opinions that pertain to policymaking. Further, we find you have failed to demonstrate that the submitted information consists of a preliminary draft of a policymaking document that will be released to the public in its final form. Accordingly, the authority may not withhold the submitted information under section 552.111. As you raise no further exceptions to disclosure, the submitted information must be released.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/dls

Ref: ID# 362365

Enc. Submitted documents

c: Requestor
(w/o enclosures)