



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 16, 2009

Ms. Ellen H. Spalding  
Feldman, Rogers, Morris & Grover, L.L.P.  
5718 Westheimer Road, Suite 1200  
Houston, Texas 77057

OR2009-17815

Dear Ms. Spalding:

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# 364660.

The Eanes Independent School District (the "district"), which you represent, received a request for the following information for a specified time frame: (1) communications from the district to the Community Bond Advisory Committee members, (2) committee reports, minutes, and summaries, and (3) documents that show or reflect how this committee was nominated and selected. You state you are releasing some information to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.111, and 552.117 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we address the requestor's contention that the district has voluntarily made the information at issue available to the public. Section 552.007 of the Government Code gives a governmental body the discretion to voluntarily release public information that is not confidential by law. *See* Gov't Code § 552.007(a). Section 552.007 requires that any such information a governmental body publicly discloses be made available to any member of the

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<sup>1</sup>In your brief, we note that you withdraw your assertion that the submitted information is excepted under section 552.101. We therefore will not address the applicability of that exception.

public. See Gov't Code § 552.007(b). The requestor asserts that the district publicly released the requested information by providing it to private citizens on the district's Community Bond Advisory Committee (the "committee"). This office previously addressed whether the disclosure of information to a citizen advisory board constitutes a voluntary disclosure to the public under section 552.007(b) of the Government Code. Open Records Decision No. 666 (2000). In that decision, we concluded that the disclosure of information to a citizen advisory board created to formulate recommendations to a governmental body does not constitute release to the public as contemplated under section 552.007 of the Government Code. *Id.* at 3-4. In this case, we understand the committee was appointed by the district Board of Trustees, and the district informs us that the committee consists of citizens and employees who provide advice and recommendations to the district on a potential bond election. Based on the facts presented in the briefs concerning the function of the committee and its relationship with the district, we conclude that the committee is, for purposes of the Act, a part of the governmental body that created it. As such, the governmental body's disclosure of information to the committee is merely an intra-agency transfer of information. See Attorney General Opinion JM-119 at 2 (1983); see also Open Records Decision Nos. 468 at 3 (1987), 464 at 5 (1987). Because such a transfer of information does not amount to a public disclosure that triggers the section 552.007(b) selective disclosure prohibition, the district is not prevented from claiming an exception under the Act to the public disclosure of the information.

You assert that the information in Exhibit B is excepted from disclosure under the deliberative process privilege encompassed by section 552.111. 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, 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 assert that the information in Exhibit B consists of draft documents that pertain to district policymaking matters involving the committee that are intended for release in final form. Based upon your representations and our review, we conclude that the district may withhold a portion of the draft documents in Exhibit B under section 552.111 of the Government Code. However, we find that the remaining information in Exhibit B consists of calendars and timelines. This information is purely administrative and does not reveal advice, opinions, or recommendations about policymaking decisions. Therefore, the district may not withhold any portion of the remaining information in Exhibit B, which we have marked for release, under section 552.111 of the Government Code.

You assert that some of the information in Exhibit C is excepted under section 552.117 of the Government Code. Section 552.117(a)(1) excepts from disclosure the current and former home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. Section 552.117 also encompasses a personal cellular telephone number, provided that a governmental body does not pay for the cell phone service. *See* Open Records Decision No. 506 at 5-6 (1988) (Gov't Code § 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may be withheld under section 552.117(a)(1) only on behalf of a current or former official or employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for information. Accordingly, to the extent the information you have marked, in addition to the information we have marked, in Exhibit C pertains to district officials or employees who timely elected confidentiality under section 552.024, the district must withhold the marked information under section 552.117(a)(1).

In summary, with the exception of the information we have marked for release, the district may withhold Exhibit B under section 552.111 of the Government Code. To the extent the district officials or employees at issue timely elected confidentiality under section 552.024 of the Government Code, the district must withhold the information you have marked in Exhibit C, in addition to the information we have marked, under section 552.117(a)(1) of the Government Code. The remaining 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](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,



Nneka Kanu  
Assistant Attorney General  
Open Records Division

NK/jb

Ref: ID# 364660

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)