



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

April 30, 2010

Mr. James G. Nolan
Assistant General Counsel
Open Records Section
Texas Comptroller of Public Accounts
P.O. Box 13528
Austin, Texas 78711

OR2010-06253

Dear Mr. Nolan:

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# 377972 (Comptroller ID# 6164411448).

The Comptroller of Public Accounts (the "comptroller") received a request for all training manuals and documents handed out in Franchise Tax Auditor Training Classes during a specified time period. You state the comptroller has released some information to the requestor. You claim the submitted information is excepted from disclosure under section 552.111 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information.

You assert the submitted information is excepted from disclosure under the deliberative process privilege encompassed by section 552.111 of the Government Code. *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*

¹Although you generally raise all the exceptions under the Act, you make no arguments to support the rest of these exceptions. Therefore, we assume you have withdrawn your claims that the remainder of these sections apply to the submitted information. *See* Gov't Code §§ 552.301, .302.

v. Gilbreath, 842 S.W.2d 408 (Tex. App.—Austin 1992, no writ). We determined section 552.111 excepts from disclosure only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. *See* ORD 615 at 5.

This office has also concluded a preliminary draft of a document 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 the submitted information consists of draft franchise tax training materials. You state these draft materials reflect recommendations and opinions of the comptroller's Audit Division concerning comptroller policies and procedures in light of legislative changes to the franchise tax laws. You also represent these drafts will be made available to the public once they have been finalized. Thus, based on your representations and our review, we conclude the comptroller may withhold the submitted information under section 552.111 of the Government Code.

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,



Bob Davis
Assistant Attorney General
Open Records Division

RSD/cc

Mr. James G. Nolan - Page 3

Ref: ID# 377972

Enc. Submitted documents

cc: Requestor
(w/o enclosures)