



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 24, 2010

Mr. Hyattye O. Simmons
General Counsel
Dallas Area Rapid Transit
P.O. Box 660163
Dallas, Texas 75266-0163

OR2010-07494

Dear Mr. Simmons:

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# 380414.

Dallas Area Rapid Transit ("DART") received a request for administrative leave paperwork regarding two named individuals and results of the investigation in question. You state DART has released some information to the requestor. You claim the submitted documents are excepted from disclosure under sections 552.107 and 552.111 of the Government Code. We have considered your arguments and reviewed the submitted information.

Initially, we note the documents submitted as Attachments B-1 and B-2 are not responsive to the instant request. The request specifically seeks administrative leave paperwork and results of the investigation. The documents in Attachments B-1 and B-2 do not fall into either of these categories. This decision does not address the public availability of the non-responsive information, and DART need not release Attachments B-1 and B-2 in response to this request.

You assert Attachment B-3 is excepted from disclosure under the deliberative process privilege encompassed by section 552.111 of the Government Code. 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. 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.

Attachment B-3 pertains to a DART employee's request to be placed on administrative leave. As previously stated, the deliberative process privilege excepts advice, recommendations, and opinions pertaining to administrative and personnel matters of broad scope that affect a governmental body's policy mission. *See* ORD 631 at 3. You assert Attachment B-3 pertains to personnel matters of a broad scope because it concerns an administrative leave policy which affects all DART employees. Attachment B-3, however, does not contain advice, recommendations, or opinions pertaining to the administrative leave policy. Rather, it merely notifies the employee of the policy and her responsibilities under that policy. Because you have not explained, and the document does not reflect, how this information constitutes advice, recommendations, or opinions pertaining to administrative or personnel matters of broad scope that affect DART's policy mission, you have failed to demonstrate how the deliberative process privilege applies to Attachment B-3. Accordingly, Attachment B-3 may not be withheld under section 552.111 of the Government Code. As you have raised no other exceptions to disclosure, Attachment B-3 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,



Jessica Eales
Assistant Attorney General
Open Records Division

JCE/eeg

Ref: ID# 380414

Enc. Submitted documents

c: Requestor
(w/o enclosures)