



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 7, 2011

Mr. James R. Raup
McGinnis, Lochridge & Kilgore, L.L.P.
600 Congress Avenue, Suite 2100
Austin, Texas 78701

OR2011-00415

Dear Mr. Raup:

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# 405330.

The Round Rock Independent School District (the "district"), which you represent, received a request for a letter that two named individuals sent to the University Interscholastic League ("UIL") in response to the district's issues with compliance to UIL competition rules. You claim that the submitted 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. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

We note a portion of the submitted information is subject to section 552.022 of the Government Code, which provides in relevant part as follows:

- (a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). The submitted memorandum constitutes a completed report made by the district. This information is subject to subsection 552.022(a)(1). You claim this information is excepted from disclosure under section 552.111 of the Government Code. However, section 552.111 is a discretionary exception that protects a governmental body's interests and is, therefore, not "other law" for purposes of section 552.022. *See id.* § 552.007; Open Records Decision Nos. 470 at 7 (1987) (governmental body may waive statutory predecessor to section 552.111 deliberative process); *see also* 665 at 2 n.5 (2000) (discretionary exceptions generally). As such, section 552.111 is not other law that makes information expressly confidential for the purposes of section 552.022, and the information at issue may not be withheld under that section. However, we will consider your claim under section 552.111 for the remaining information not subject to section 552.022(a)(1).

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 section 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 at 1-2 (1990).

In Open Records Decision No. 615, this office reexamined the predecessor to the section 552.111 exception 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 section 552.111 excepts from disclosure only those internal communications consisting of advice, recommendations, and opinions reflecting the policymaking processes of the governmental body. *See* ORD 615 at 5. A governmental body's policymaking functions do not encompass internal administrative or personnel matters, and disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. *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). However, 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).

Further, section 552.111 does not protect facts and written observations of facts and events that are severable from advice, opinions, and recommendations. *See* ORD 615 at 5. But if factual information is so inextricably intertwined with material involving advice, opinion, or recommendation as to make severance of the factual data impractical, the factual information also may be withheld under section 552.111. *See* Open Records Decision

No. 313 at 3 (1982). When determining if an interagency memorandum is excepted from disclosure under section 552.111, we must consider whether the agencies between which the memorandum is passed share a privity of interest or common deliberative process with regard to the policy matter at issue. *See* Open Records Decision No. 561 at 9 (1990).

You state the information at issue contains the district's opinions and recommendations concerning a district employee's compliance with UIL rules and the need, if any, for penalties for non-compliance. Upon review, we find the remaining information consists of either general administrative information that does not relate to policymaking or information that is purely factual in nature. Accordingly, the district has failed to demonstrate how the remaining information is protected by the deliberative process privilege, and it may not be withheld under section 552.111. As no further exceptions to disclosure have been raised, the submitted information must be released to the requestor.

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,



Nneka Kanu
Assistant Attorney General
Open Records Division

NK/em

Ref: ID# 405330

Enc. Submitted documents

cc: Requestor
(w/o enclosures)