



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 5, 2011

Ms. Andrea Sheehan
Law Offices of Robert E. Luna, P.C.
4411 North Central Expressway
Dallas, Texas 75205

OR2011-06192

Dear Ms. Sheehan:

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# 417851.

The Carrollton-Farmers Branch Independent School District (the "district"), which you represent, received twenty-two requests for documents related to a specified Board of Trustees (the "board") meeting and a specified District Improvement Council (the "DIC") meeting. You state the district has released some of the requested information. You also state some of the requested information does not exist.¹ You claim some of the submitted information is not subject to the Act. You also claim that the submitted information is excepted from disclosure under section 552.111 of the Government Code. We have considered your arguments and reviewed the submitted information. We have also received and considered comments submitted by one of the requestors. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Initially, we note that the submitted information includes minutes of an open meeting of the board. Section 551.022 of the Open Meetings Act, chapter 551 of the Government Code, expressly provides that the "minutes and tape recordings of an open meeting are public records and shall be available for public inspection and copying on request to the governmental body's chief administrative officer or the officer's designee." *Id.* § 551.022. In this instance, you state that the submitted draft minutes have not been approved by the

¹The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

board. However, we note the minutes of a public meeting of a governmental body are public records when entered, are public in whatever form they exist, and public access may not be delayed until formal approval is obtained. Open Records Decision No. 225 (1979). Accordingly, we conclude that section 551.022 is applicable to the submitted minutes. Further, although you raise section 552.111 of the Government Code as an exception to disclosure of this information, we note that as a general rule, the exceptions to disclosure found in the Act are not applicable to information that other statutes make public. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). In addition, Open Records Decision No. 225 concluded section 552.111 is not applicable to notes of minutes because they do not contain advice or opinion and only reflect what in fact occurred. ORD 225 at 3. Therefore, the district must release the submitted open meeting minutes to the requestor.

Next, you assert the board member's notes are not subject to the Act. The Act is applicable to "public information." Gov't Code, § 552.021. Section 552.002 of the Act provides that "public information" consists of "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it." *Id.* § 552.002(a). Information that is collected, assembled, or maintained by a third party may be subject to disclosure under the Act if a governmental body owns or has a right of access to the information. *See* Open Records Decision No. 462 (1987); *cf.* Open Records Decision No. 499 (1988). You state the board member at issue took notes on a personal electronic device that is not owned by the district. You further state the district does not have a right of access to these personal notes. This office has concluded a Department of Public Safety ("DPS") promotion board member's notes taken during an interview are subject to the Act because they were created in transacting DPS' official business of evaluating applicants for employment. Open Records Decision No. 626 at 2 (1994). This office reached this conclusion even though the board member was not required to take notes and it was within the board member's discretion whether to keep the notes. *Id.* at 1-2. Upon review, we find the submitted notes are related to the official business of the district and, thus, considered "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business" by or for the district. *See* Gov't Code § 552.021; *see also* Open Records Decision No. 635 (1995) (statutory predecessor not applicable to personal information unrelated to official business and created or maintained by state employee involving de minimis use of state resources). Therefore, the submitted notes are subject to the Act, and we will address your claimed exception for this and the remaining information.

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 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 re-examined 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).

You state the submitted worksheets, compilation of worksheet results, and board member notes were used by the district to gain preliminary input on resource allocation issues related to the formulation of the district's 2011-2012 budget. You explain that the DIC was established pursuant to section 11.251 of the Education Code to develop, review, and revise the district's improvement plan. See Educ. Code § 11.251 (board shall establish and meet with district-level decision-making committee to review district's educational plans, goals, and instructional programs). You further explain that the DIC members also completed worksheets to provide the district with preliminary input on resource allocation. You state that the budget process is ongoing. You further state that this information reflects the advice, opinion, and recommendation of board members, district staff, and DIC members. Upon review, we agree the submitted worksheets, compilation of results, and board member notes consist of advice, opinions, or recommendations regarding policymaking matters and the district may withhold this information under section 552.111 of the Government Code.

We note one of the requestors identifies himself as a member of the DIC and you ask whether he has a right of access to his worksheet. The purpose of the Act is to prescribe conditions under which members of the general public may obtain information from a governmental body. See Attorney General Opinion JM-119 (1983) (addressing statutory predecessor). An official of a governmental body who, in an official capacity, requests information held by the governmental body does not act as a member of the public in doing so. Thus, the exceptions to required public disclosure under the Act do not control the right

of access of an official of a governmental body to information maintained by the governmental body. *See id.* at 3 (member of community college district board of trustees, acting in official capacity, has inherent right of access to information maintained by district). Consequently, whether the requestor has a right of access to the requested information depends on whether he is seeking the information in his official capacity as a member of the DIC. This office cannot resolve factual issues in the decisional process. *See* Open Records Decision Nos. 592 at 2 (1991), 552 at 4 (1990), 435 at 4 (1986). Where fact issues cannot be resolved as a matter of law, we must rely on the facts alleged to us by the governmental body that is requesting our decision or on those facts that are discernible from the information submitted for our inspection. *See* ORD 552 at 4.

In this instance, you state this requestor made a separate request for his worksheet in his official role as a member of the DIC. You state the district released a copy of this requestor's worksheet to him in response to that request. You state the current request from this requestor is a request in his personal capacity as a member of the public. Thus, the Act is applicable to his request, and the district may withhold his worksheet under section 552.111 of the Government Code.

In summary, the district must release the submitted open meeting minutes. The district may withhold the remaining 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,



Andrea L. Caldwell
Assistant Attorney General
Open Records Division

ALC/eeg

Ref: ID# 417851

Enc. Submitted documents

c: 17 Requestors
(w/o enclosures)