



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 10, 2011

Ms. Ylise Janssen  
Senior School Law Attorney  
Austin Independent School District  
Office of the General Counsel  
1111 West Sixth Street  
Austin, Texas 78703-5338

OR2011-08255

Dear Ms. Janssen:

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# 420259.

The Austin Independent School District (the "district") received three requests from two requestors for (1) a list of employees who have been notified they are on the reduction in force list; (2) a list of the names of district employees who received reduction in force letters; and (3) the names of the 1,153 district employees notified they would lose their jobs in the reduction in force. You state you have released some of the information responsive to the request for information. You claim 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 a representative of the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, the requestor contends the district failed to comply with section 552.301 of the Government Code for a previous request dated March 1, 2011, for "[a] list of employees affected by the [r]eduction in [f]orce as of March 2 including their names, positions and locations," by failing to either release the responsive documents or request a ruling from this office. *See id.* § 552.301. Thus, the requestor states, pursuant to section 552.302, the district may not withhold the information submitted in response to the present request. *See id.* § 552.302 (where request for attorney general decision does not comply with requirements of section 552.301, information at issue is presumed to be public). Pursuant to

section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See id.* § 552.301(b). Pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See id.* § 552.301(e). In its response to the requestor's contention, the district states on the date the district received the March 1, 2011 request, the district did not maintain any information employees affected by any reduction in force.<sup>1</sup> However, the district further explains, and provides documentation showing, in an attempt to make a good faith effort to relate the request to existing information, it timely responded to the requestor's previous request for information by releasing certain information to the requestor.<sup>2</sup> The district states it did not maintain any other information responsive to the March 1, 2011, request on the date that request was received. Whether additional responsive information existed on the date a request for information was received is a question of fact. This office is unable to resolve disputes of fact in the open records ruling process. *See Open Records Decision Nos. 592 at 2 (1991), 552 at 4 (1990), 435 at 4 (1986)*. Accordingly, where an issue cannot be resolved as a matter of law, we must rely upon the facts alleged to us by the governmental body requesting our opinion, or upon those facts that are discernible from the documents submitted for our inspection. *See ORD 552 at 4*. Thus, based on the district's representations and information provided to this office, we conclude the district released all information maintained by the district that was responsive to the March 1, 2011, request. The district explains the requests at issue in this request for a ruling are new requests for information. We find the district complied with section 552.301 of the Government Code with respect to these requests, and we will consider the district's argument against disclosure of the submitted information.

Section 552.111 of the Government Code excepts from disclosure "an interagency or intra-agency memorandum or letter that would not be available by law to a party in litigation with the agency." Gov't Code § 552.111. This exception 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)*.

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<sup>1</sup>We note the Act does not require a governmental body to disclose information that did not exist when the request for information 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 No. 452 at 3 (1986)*.

<sup>2</sup>We note a governmental body must make a good-faith effort to relate a request to information held by the governmental body. *See Open Records Decision No. 561 at 8 (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 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).

Further, section 552.111 does not protect facts and written observations of facts and events that are severable from advice, opinions, and recommendations. *Arlington Indep. Sch. Dist. v. Tex. Attorney Gen.*, 37 S.W.3d 152 (Tex. App.—Austin 2001, no pet.); 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).

This office has also concluded 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 state the submitted information is a draft document detailing the district's ongoing progress in implementing a reduction in force for the 2011-2012 school year. You inform us the information at issue was developed for presentation to the district's Board of Trustees (the "board"). You further state the information is intended for presentation to the board as part of policymaking process pursuant to the district's board policy. You explain the information at issue "pertains to personnel matters of broad scope, reflecting a district-wide reorganization and reduction in force that will affect the [d]istrict's policy mission." You state the information consists of advice, opinions, and recommendations "reflecting the [d]istrict's policymaking processes with respect to its decisions to reorganize the [d]istrict in the face of its declared financial exigency." You further inform us the information "reveals the [d]istrict's ongoing policy considerations relative to staffing and funding." Based on your representations, we find the district has demonstrated the submitted information consists of draft documentation pertaining to the policymaking functions of the

district. However, you do not explain whether this document will be released to the public in its final form. Accordingly, to the extent the submitted information will be released to the public in its final form, the district may withhold it under section 552.111 of the Government Code. Conversely, to the extent the district will not release the submitted information to the public in its final form, the information may not be withheld 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](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,



Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/bs

Ref: ID# 420259

Enc. Submitted documents

c: Requestor  
(w/o enclosures)