



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 6, 2013

Mr. Edward F. Guzman
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283

OR2013-02151

Dear Mr. Guzman:

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# 478117 (COSA No. W011428-110812).

The City of San Antonio (the "city") received a request for all Memorandum of Understandings submitted to the city by all school districts that will be or could be affected by a specified program. You claim the submitted information is excepted from disclosure under sections 552.107 and 552.111 of the Government Code. Additionally, you state release of this information may implicate third-party interests.¹ Accordingly, you have notified the interested third parties of the request for information and of their right to submit arguments to this office as to why the information should not be released. *See* Gov't Code § 552.304 (providing interested party may submit comments stating why information should or should not be released). We have received comments from a law firm representing several of the interested third parties. We have considered the arguments and reviewed the submitted information.

Section 552.111 of the Government Code excepts from disclosure "[a]n interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency[.]" *Id.* § 552.111. Section 552.111 encompasses the deliberative process privilege. *See* Open Records Decision No. 615 at 2 (1993). The purpose of this exception

¹The third parties are: Alamo Heights, East Central, Edgewood, Fort Sam Houston, Harlandale, Judson, Lackland, Northeast, Northside, Randolph Field, San Antonio, Somerset, South San, Southside, and Southwest Independent School Districts.

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, orig. proceeding); 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, orig. proceeding). We determined section 552.111 excepts from disclosure only those internal communications that consist of advice, opinions, recommendations, 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 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.

Section 552.111 can also encompass communications between a governmental body and a third party, including a consultant or other party with a privity of interest. *See* Open Records Decision No. 561 at 9 (1990) (section 552.111 encompasses communications with party with which governmental body has privity of interest or common deliberative process). When determining if an interagency memorandum is excepted from disclosure under section 552.111, we must consider whether the entities between which the memorandum is passed share a privity of interest or common deliberative process with regard to the policy matter at issue. *See id.* For section 552.111 to apply, the governmental body must identify the third party and explain the nature of its relationship with the governmental body.

Section 552.111 is not applicable to a communication between the governmental body and a third party unless the governmental body establishes it has a privity of interest or common deliberative process with the third party. *See* ORD 561.

You state the submitted information consists of a draft policymaking document regarding the implementation of an early childhood education program by a municipal development corporation created by the city. *See* Local Gov't Code § 379A.011 (governing body of municipality may create municipal development corporation). You state, because the program is an important policy initiative, city personnel, including corporation employees, have engaged consultants and local school districts to review and discuss their ideas regarding the program. *See id.* § 379A.052(4) (employees of the municipal development corporation are employees of the municipality). You state the document at issue is a draft proposal of the structure, management, and funding for the program and reflects the discussions and thought processes by and among city personnel. Further, you indicate the document will be publicly released in its final form after it has been approved and executed. Based upon your representations and our review, we find the city may withhold the submitted information in its entirety under section 552.111 of the Government Code.²

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,



Michelle R. Garza
Assistant Attorney General
Open Records Division

MRG/bhf

²As our ruling is dispositive, we need not address the remaining arguments against disclosure.

Ref: ID# 478117

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Dr. Kevin Brown
Alamo Heights ISD
7101 Broadway
San Antonio, Texas 78209
(w/o enclosures)

Dr. Brian Gottardy
Northeast ISD
8961 Tesoro Drive, Suite 602
San Antonio, Texas 78217
(w/o enclosures)

Dr. Jose A. Cervantes
Edgewood ISD
5358 West Commerce Street
San Antonio, Texas 78237
(w/o enclosures)

Dr. William Walker
Randolph Field ISD
P.O. Box 2217
San Antonio, Texas 78148
(w/o enclosures)

Dr. Willis Mackey
Judson ISD
8012 Shin Oak Drive
San Antonio, Texas 78233
(w/o enclosures)

East Central ISD
Fort Sam Houston ISD
Harlandale ISD
Lackland ISD
Northside ISD
Southside ISD
Southwest ISD
C/O Mr. Robert Russo
Walsh, Anderson, Gallegos, Green and
Trevino
100 North East Loop 410 #900
San Antonio, Texas 78216
(w/o enclosures)

Ms. Rebecca Robinson
South Sam ISD
5622 Ray Ellison Drive
San Antonio, Texas 78242
(w/o enclosures)

Mr. Saul Hinojosa
Somerset ISD
P.O. Box 279
Somerset, Texas 78069
(w/o enclosures)

Dr. Sylvester Perez
San Antonio Isd
141 Lavaca
San Antonio, Texas 78210
(w/o enclosures)