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June 13, 2011

Open Records Division
Office of the Attorney General
Opinions Division
P.O. Box 12548
Austin, Texas 78711-2548

VIA CERTIFIED MAIL

Re: **Public Information Requests from Mr. Kenneth W. Arterbury to the North Central Texas College dated May 21, 2011 and May 24, 2011.**

To Whom It May Concern:

This letter is written on behalf of the North Central Texas College ("NCTC" or "College") to request an opinion from the Texas Attorney General regarding documents requested by Mr. Kenneth W. Arterbury ("Arterbury"). Specifically, NCTC received a request from Arterbury on May 21, 2011 requesting "*documentation that shows the newspaper posted articles, ads and or other means that were misleading and untrue to the voters.*" See Exhibit "A". The College received an additional request from Arterbury on May 24, 2011 requesting "*documentation that shows the voters were given misinformation and untruths ads put out thru the media.*" See Exhibit "B".

A request for clarification was sent to Arterbury on May 26, 2011 which tolled the deadline. See Exhibit "C". On May 30, 2011, our office received Arterbury's response which specifically requested the following:

- "*Information concerning the "rumors, misinformation, and outright untruths" to which he referred in the above-referenced Cooke County newspapers:*

1. Media publications:

- dates, page numbers, and texts*
- authors of the published articles*
- Cite the "misinformation and outright untruths" in the published texts*
- Furnish a factual rebuttal to the "misinformation and outright untruths"*

2. "Other means" (Lindsay Friday, May 20, 2011 issue):

- identify the sources and authors of "other means"*

- (b) dates, text, page numbers (if applicable)*
- (c) Cite the "misinformation and outright untruths"*
- (d) Furnish a factual rebuttal to the "misinformation and outright untruths"*

• *I am requesting (in addition to the media publications and "other means" explanations, requests 1 and 2, page 1) access to the following records of discussions, meetings, and conclusions (including proposed counter-strategy) reached by Dr. Hadlock, his administrative team, and the NCTC Citizens Advisory Committee regarding their perception(s) of the "rumors, misinformation, and outright untruths" made by opponents of the bond issue:*

- 1. Internal E-mails, spread-sheets, faxes, and any other NCTC written records between Dr. Hadlock and members of his cabinet, administrators and directors; and*
- 2. Communications to:*
 - (a) supporters of the Vote for NCTC PAC*
 - (b) newspapers (including employees, management, and owners)*
 - (c) radio stations (including employees, management, and owners)*
 - (d) Mike Stevens and/or Action Printing (including employees, management, and owners)*
 - (e) Citizens Advisory Committee (including current and past members)"*

See Exhibit "D".

According to interpretations by the Attorney General, the College has ten (10) business days to respond to Arterbury's request. Therefore, NCTC's request is timely filed.

The documents subject to this request are enclosed as **Exhibit "E"** (Copy of NCTC responsive documents).

The NCTC objects to the disclosure of the requested information as follows:

With regard to substantive issues, the NCTC acknowledges Section 552.022 of the Government Code which provides in part:

(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[.]

Tex. Gov't Code § 552.022(a)(1). The requested information is public under Section 552.022(a)(1), and must therefore be released, unless the information is expressly made confidential under other law. Section 552.101 of the Government Code is considered "other law" for the purposes of Section 552.022. NCTC asserts that portions of the information subject

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to the requests are excepted from disclosure, as outlined below. Information not subject to the College's request has been released to the requestor.

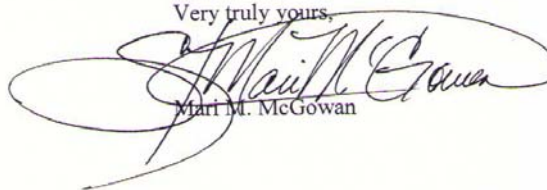
Agency Memoranda – Section 552.111

NCTC asserts that emails in Exhibit "E" should be excepted and redacted prior to distribution under section 552.111 which states that information created for an agency by outside consultants acting on behalf of the agency in an official capacity may be within the scope of section 552.111. The Attorney General has interpreted section 552.111 to incorporate both the deliberative process privilege and the work product privilege. Section 552.111 excepts "an interagency or intra-agency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), the Attorney General 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), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking process of the governmental body.

Additionally, Section 552.111 incorporates the deliberative process privilege into the Public Information Act for intra-agency and interagency communications. The deliberative process, as incorporated into the Public Information Act, protects from disclosure intra-agency and interagency communications consisting of advice, opinion, or recommendations on policymaking matters of the governmental body at issue. The purpose of withholding advice, opinion, or recommendations under section 552.111 is "to encourage frank and open discussion within the agency in connection with its decision-making processes" pertaining to policy matters. "An agency's policymaking functions do not encompass internal administrative or personnel matters, and disclosure of information about such matters will not inhibit free discuss of policy issues among agency personnel." An agency's policy making functions do include, however, administrative and personnel matters of broad scope that affect the governmental body's policy mission. In Open Records Decision No. 631 (1995), section 552.111 excepted from required public disclosure the portions of the report that constituted advice, recommendations, or opinions as the report was much broader and involved the university's education mission. The responsive documents in Exhibit "E" are documents reflecting these communications. Therefore, the College requests the documents be withheld in their entirety, or in the alternative, portions of the documents containing such protected information should be withheld.

The NCTC requests consideration of this request. Thank you for your cooperation and assistance in this regard.

Very truly yours,



Mari M. McGowan

MMM/cml

Enclosures
ARB1-#593849