



June 26, 2000

Mr. William L. Rentfro
Rentfro, Faulk & Blakemore, L.L.P.
185 East Ruben M. Torres, Sr. Boulevard
Brownsville, Texas 78520-9136

OR2000-2408

Dear Mr. Rentfro:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 136523.

The Brownsville Independent School District (the “district”) received a request for “names and supporting documents regarding Agenda Items 38 & 39 at the April 6, 2000 board meeting.” You claim that the requested information is excepted from disclosure under sections 552.101, 552.102, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.¹

Section 552.101 excepts from disclosure information deemed confidential by law. You assert that the requested information is confidential under section 552.101 in conjunction with section 551.074 of the Open Meetings Act. You state that the meeting at issue was held in closed session “to facilitate informed deliberation on matters affecting the livelihood of District employees,” pursuant to section 551.074(a)(1) of the Government Code. That section states that a governmental body is not required to conduct an open meeting to deliberate certain personnel matters, including discipline or dismissal of a public officer or employee. Section 551.104(c) of the Government Code provides that “[t]he certified agenda or tape of a closed meeting is available for public inspection and copying *only under a court*

¹We note that you state that the items you submitted “represent” the requested information; we assume that the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). Here, we do not address any other requested records to the extent that those records contain substantially different types of information than those submitted to this office.

order issued under Subsection (b)(3)." (Emphasis added.). Thus, such information cannot be released to a member of the public in response to an open records request. See Open Records Decision No. 495 (1988). However, we note that while the certified agenda or tape recording of a properly held closed meeting is confidential, information is not made confidential by the mere fact that it was discussed in a closed meeting. Open Records Decision Nos. 605 at 2-3 (1992) (mere fact that information was discussed in executive session does not make it confidential under Public Information Act), 485 (1987) (investigative report *orally* submitted by private detective to junior college district board may not be withheld merely because its contents were considered in executive session of board).

The information which you have submitted to us as representing the agenda items does not constitute a certified agenda or tape recording. You have provided "agenda item summaries and backup." The two "agenda item summaries" are topics for discussion at an executive session. One "backup" is a memo that the topic has been deleted because the administrator whose nonrenewal was to be considered resigned, so that agenda item was deleted from the agenda and never discussed in executive session. The other agenda item is also a proposed nonrenewal of an administrator, and the backup provided is six pages of policy, not specific to the individual. It is essentially a list of things that will get someone fired and a description of hearing procedures. This information is not confidential by law. Consequently, the district may not withhold any of the submitted information under section 552.101 in conjunction with the Open Meetings Act.

You also assert section 552.111. Section 552.111 of the Government Code excepts from required public disclosure interagency and intraagency memoranda and letters, but only to the extent that they contain advice, opinion, or recommendations intended for use in the entity's policymaking process. Open Records Decision No. 615 at 5 (1993). The purpose of this section is "to protect from public disclosure advice and opinions *on policy matters* and to encourage frank and open discussion within the agency in connection with its decision-making processes." *Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.--San Antonio 1982, writ ref'd n.r.e.) (emphasis added); see also *Garland v. Dallas Morning News*, 969 S.W.2d 548 (Tex. App.--Dallas 1998, pet. granted.). However, an agency's policymaking functions do not encompass internal administrative or personnel matters, as disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. Open Records Decision No. 615 at 5-6 (1993). Therefore, none of the submitted information may be withheld under section 552.111.

Finally, you assert section 552.102 of the Government Code. Section 552.102 excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). In *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.), the court ruled that the test to be applied to information claimed to be protected under section 552.102 is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation* for information claimed to be protected under the doctrine of common law

privacy as incorporated by section 552.101. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). That test requires a finding that (1) the information is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in disclosure of the information. *Id.* at 685; Open Records Decision No. 611 at 1 (1992). The information submitted to this office does not contain any intimate and embarrassing information. Therefore, none of the submitted information may be withheld under section 552.102.

We note that section 552.301 of the Government Code requires a governmental body to ask for an attorney general's ruling if it wishes to withhold information and to submit that information to this office. You assert that the information pertaining to the administrator's job performance evaluation is confidential pursuant to section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. But you have not submitted any evaluations to this office for a determination as to whether the district may withhold them. Consequently, because you have not submitted the information, we have no basis for finding it confidential. Thus, we have no choice but to order the information released per section 552.302. If you believe the information is confidential and may not lawfully be released, the district must challenge the ruling in court as outlined below.

In summary, the district must release all of the requested information. This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

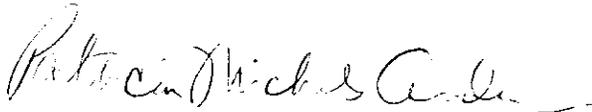
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one

of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Patricia Michels Anderson
Assistant Attorney General
Open Records Division

PMA/pr

Ref: ID# 136523

Encl. Submitted documents

cc: Mr. Melrose E. Huff
The Brownsville Herald
1135 E. Van Buren Street
Brownsville, Texas 78520
(w/o enclosures)