



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 9, 2006

Ms. Christine Badillo  
Walsh, Anderson, Brown, Schulze & Aldridge, P.C.  
P. O. Box 2156  
Austin, Texas 78768

OR2006-06098

Dear Ms. Badillo:

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# 251422.

The Lake Travis Independent School District (the "district"), which you represent, received thirteen requests from the same requestor for certain correspondence "authored or approved" by two named district employees and information pertaining to several specified district board meeting agenda items.<sup>1</sup> You claim that the submitted information is excepted from disclosure under sections 552.103, 552.111, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

First, we note that the information responsive to requests numbered 1000 and 1001 is subject to the Family Educational Rights and Privacy Act of 1974 ("FERPA"), 20 U.S.C. § 1232g(b)(1). FERPA provides that no federal funds will be made available under any applicable program to an educational agency or institution that releases personally identifiable information, other than directory information, contained in a student's education records to anyone but certain enumerated federal, state, and local officials and institutions, unless otherwise authorized by the student's parent. See 20 U.S.C. § 1232g(b)(1). "Education records" means those records that contain information directly related to a student and are maintained by an educational agency or institution or by a person acting for such agency or institution. *Id.* § 1232g(a)(4)(A).

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<sup>1</sup>For reference, you have numbered these thirteen requests 998, 1000, 1001, 1007, 1008, 1009, 1010, 1011, 1012, 1013, 1016, 1017, and 1018.

Under FERPA, a student's parents or guardians have an affirmative right of access to their child's education records. *Id.* § 1232g(a)(1)(A); 34 C.F.R. § 99.3. Here, the requestor is the parent of the student to whom the information responsive to requests numbered 1000 and 1001 pertains. We find that this information constitutes education records of the requestor's child to which he has a right of access under FERPA. You claim that this information is excepted from disclosure under section 552.103 of the Government Code. However, section 552.103 is a state statute that is preempted by federal law to the extent it conflicts with that federal law. *See Equal Employment Opportunity Comm'n v. City of Orange, Tex.*, 905 F. Supp 381, 382 (E.D. Tex. 1995) (federal law prevails over inconsistent provision of state law); *see also* Open Records No. 431 (1985) (information subject to right of access under FERPA may not be withheld pursuant to statutory predecessor to section 552.103). Thus, the information responsive to requests numbered 1000 and 1001 may not be withheld from the requestor under section 552.103, and it must be released to the requestor pursuant to FERPA.

We next address your claim under section 552.111 of the Government Code. This section 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. In Open Records Decision No. 615 (1993), this office 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 processes of the governmental body. *City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 364 (Tex. 2000); *Arlington Indep. Sch. Dist. v. Tex. Attorney Gen.*, 37 S.W.3d 152 (Tex. App.—Austin 2001, no pet.). An agency's policymaking functions do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. ORD 615 at 5-6. Additionally, section 552.111 does not generally except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. *Arlington Indep. Sch. Dist.*, 37 S.W.3d at 160; ORD 615 at 4-5.

You explain that the submitted information responsive to the requests numbered 1007 through 1018 "consist[s] of memoranda . . . contain[ing] the Superintendent's opinions and recommendations for action [that are] critical to the Board's policymaking process and play a key role in [the] Board's ultimate decision on policy issues." Having considered your arguments and reviewed the information at issue, we agree that some of this information, which we have marked, may be withheld under section 552.111. However, we find that you have not explained how the remainder of this information constitutes internal communications of the district reflecting the deliberative or policymaking processes of the district. As such, none of the remaining information at issue may be withheld under section 552.111.

Lastly, we address your claim under section 552.137 of the Government Code. This section excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov’t Code § 552.137(a)-(c). Section 552.137 does not apply to a government employee’s work e-mail address because such an address is not that of the employee as a “member of the public,” but is instead the address of the individual as a government employee. The e-mail addresses that you have marked do not appear to be of a type specifically excluded by section 552.137(c). As such, these e-mail addresses must be withheld under section 552.137 unless their owners have affirmatively consented to their release. *See* Gov’t Code § 552.137(b).

In summary, the information responsive to requests numbered 1000 and 1001 must be released to the requestor pursuant to FERPA. The district may withhold the information we have marked under section 552.111 of the Government Code. The e-mail addresses that you have marked must be withheld under section 552.137 of the Government Code. The remaining submitted information must be released.<sup>2</sup>

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 ten 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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the

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<sup>2</sup>Because some of this information would not be releasable with respect to the general public, the district should again seek our decision if it receives another request for this information from a person other than the requestor.

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); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

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 ten calendar days of the date of this ruling.

Sincerely,



Robert B. Rapfogel  
Assistant Attorney General  
Open Records Division

RBR/eb

Ref: ID# 251422

Enc. Submitted documents

c: Mr. David Lovelace  
103 Galaxy  
Austin, Texas 78734  
(w/o enclosures)