



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 26, 2006

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

OR2006-12700

Dear Ms. Greenberg:

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# 262951.

The Lake Travis Independent School District (the "district"), which you represent, received sixteen requests for information from the same requestor. You state that the district has released information responsive to nine of the requests. You state that the district has no information responsive to five of the requests.¹ You also state that the district has sought clarification from the requestor for one of the requests.² You claim that a portion of the submitted information is excepted from disclosure under sections 552.111 and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

¹ We note that the Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

² Accordingly, should the requestor respond to the request for clarification, the district must seek a ruling from this office before withholding any responsive information from him. *See generally* Open Records Decision No. 633 (1999) (providing for tolling of ten-business-day deadline to request attorney general decision while governmental body awaits clarification).

You claim that a portion of the submitted information is excepted from disclosure 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 information at issue “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, the remaining information for which you claim section 552.111 is purely factual in nature and is therefore not excepted from disclosure under this section. As such, none of the remaining information at issue may be withheld under section 552.111.

You also claim that a portion of the remaining information is excepted from disclosure under section 552.136 of the Government Code, which provides as follows:

(a) In this section, “access device” means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

- (1) obtain money, goods, services, or another thing of value; or
- (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

Gov't Code § 552.136. The district must withhold the checking account number you have marked under section 552.136. We find, however, that you have not demonstrated that the license activation codes you have marked may be used to obtain money, goods, services, or another thing of value, or initiate a transfer of funds. Therefore, these numbers may not be withheld under section 552.136.

In summary, the district may withhold the information we have marked under section 552.111 of the Government Code. The district must withhold the checking account number you have marked under section 552.136. The remaining submitted information must be released to the requestor.

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, 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 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).

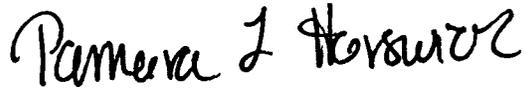
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink that reads "Tamara L. Harswick". The signature is written in a cursive, slightly slanted style.

Tamara L. Harswick
Assistant Attorney General
Open Records Division

TLH/sdk

Ref: ID# 262951

Enc. Submitted documents

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