



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

April 18, 2007

Ms. Bernadette Gonzalez
Coordinator, Records & Legal Services
Eanes Independent School District
601 Camp Craft Road
Austin, Texas 78746

OR2007-04346

Dear Ms. Gonzalez:

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# 276287.

The Eanes Independent School District (the "district") received a request for e-mails between anyone using a district e-mail account and specified Lake Travis Independent School District e-mail account owners during the month of October 2006. You state the district will release some information, but you claim that the submitted information is excepted from disclosure under sections 552.111 and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.111 of the Government Code 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, 160 (Tex. App.—Austin 2001, no pet.). 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. Additionally, 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.

However, an agency's policymaking functions do include administrative and personnel matters of broad scope that affect the governmental body's policy mission. Open Records Decision No. 631 at 3 (1995). When determining if an interagency memorandum is excepted from disclosure under section 552.111, we must consider whether the agencies between which the memorandum is passed share a privity of interest or common deliberative process with regard to the policy matter at issue. *See* Open Records Decision No. 561 at 9 (1990). Section 552.111 can also protect communications with outside third parties if the governmental body shares a privity of interest or common deliberative process with the third party. Open Records Decision Nos. 464 (1987), 429 (1985); *see also Wu v. Nat'l Endowment of the Humanities*, 460 F.2d 1030 (5th Cir. 1972).

We have reviewed the submitted information and find that it consists of a communication with a third party, and that the district has not established privity of interest or common deliberative process with this party. Accordingly, the submitted information may not be withheld under section 552.111 of the Government Code.

Section 552.137 of the Government Code 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). The e-mail addresses that you have marked do not appear to be of a type specifically excluded by section 552.137(c). You inform us the owners of these e-mail addresses have not consented to their release. As such, these e-mail addresses must be withheld under section 552.137 of the Government Code. *See id.* § 552.137(b). The remaining submitted information must be released.

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,



Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/eb

Ref: ID# 276287

Enc. Submitted documents

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