



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 14, 2007

Mr. Philip D. Fraissinet
Bracewell & Giuliani LLP
711 Louisiana Street, Suite 2300
Houston, Texas 77002

OR2007-10428

Dear Mr. Fraissinet:

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 #286533.

The Corpus Christi Independent School District (the "district"), which you represent, received a request for "any and all score cards and or criteria used to determine which Miller High School staff would be re-hired for the 2007-2008 school year." You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.111 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes, such as section 21.355 of the Education Code. Section 21.355 provides, "A document evaluating the performance of teachers or administrators is confidential." Educ. Code § 21.355. This office has interpreted this section to apply to any document that evaluates, as that term is commonly understood, the performance of a teacher or administrator. Open Records Decision No. 643

¹Although you raise section 552.021 of the Government Code, we note that section 552.021 is not an exception to public disclosure under chapter 552 of the Government Code. However, we understand you to raise section 552.111 of the Government Code, as section 552.111 is the proper exception for the substance of your argument.

(1996). This office has determined that a teacher is someone who is required to hold and does hold a certificate or permit required under chapter 21 of the Education Code and is teaching at the time of the evaluation. *Id.* We also determined that the word “administrator” in section 21.355 means a person who is required to and does in fact hold an administrator’s certificate under subchapter B of chapter 21 of the Education Code and is performing the functions of an administrator, as that term is commonly defined, at the time of the evaluation. *Id.*

You state that all of the submitted score cards, interview criteria, and questionnaires pertain to evaluations of district teachers and administrators made during a re-hiring process, which was necessary because the district failed to make “Adequate Yearly Progress.” You argue that these documents should be withheld under section 21.355 of the Educational Code. Upon review of your representations and the submitted documents, we find that none of the score cards, interview criteria, and questionnaires actually evaluate any of the candidates’ performances as teachers or administrators. Instead, they evaluate how well a specific candidate performed during the re-hiring process. Therefore, none of the information you have marked under section 552.101 in conjunction with section 21.355 may be withheld from the requestor.

You assert that a portion of the submitted documents should be withheld as interagency memoranda under section 552.111 of the Government Code. Section 552.111 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” and encompasses the deliberative process privilege. *See* Open Records Decision No. 615 at 2 (1993). The purpose of section 552.111 is to protect advice, opinion, and recommendation in the decisional process and to encourage open and frank discussion in the deliberative process. *See Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.--San Antonio 1982, no writ); Open Records Decision No. 538 at 1-2 (1990).

In Open Records Decision No. 615 (1993), this office re-examined the statutory predecessor to section 552.111 in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.-- Austin 1992, no writ). We determined that section 552.111 excepts from disclosure only those internal communications that consist of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. *See* Open Records Decision No. 615 at 5. A governmental body’s policymaking functions do not encompass routine internal administrative or personnel matters, and disclosure of information about such matters will not inhibit free discussion of policy issues among agency personnel. *Id.*; *see also City of Garland v. Dallas Morning News*, 22 S.W.3d 351 (Tex. 2000) (section 552.111 not applicable to personnel-related communications that did not involve policymaking). A governmental body’s policymaking functions do include administrative and personnel matters of broad scope that affect the governmental body’s policy mission. *See* Open Records Decision No. 631 at 3 (1995). 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. v. Tex. Attorney Gen.*, 37 S.W.3d 152 (Tex. App.-Austin 2001, no pet.); ORD 615 at 4-5.

You state that the submitted documents pertain to “staff re-evaluations containing the advice, recommendations, and opinions on the role that various staff members should play in the [d]istrict restructuring endeavors.” You also state that this information represents advice, recommendations and opinions concerning the district’s policymaking process in “achieving its educational mission.” However, upon review of your representations and the submitted documents, we find that submitted documents relate to oral interviews, written questionnaires and essay results of individual candidates. Thus, you have failed to demonstrate that this information reveals the district’s advice, recommendations, or opinions on personnel matters of broad scope. See ORD 631 (stating university’s report revealed its policies concerning affirmative action and its abilities to meet needs of a diverse student body). Accordingly, none of the information you have submitted may be withheld as intra or interagency memoranda under section 552.111 of the Government Code. As you raise no further exceptions to disclosure, the 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,


Reg Hargrove
Assistant Attorney General
Open Records Division

RJH/eeg

Ref: ID# 286533

Enc. Submitted documents

c: Ms. Adriana L. Garza
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(w/o enclosures)