



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 12, 2008

Mr. Humberto F. Aguilera
Escamilla & Poneck, Inc.
P.O. Box 200
San Antonio, Texas 78291-0200

OR2008-03340

Dear Mr. Aguilera:

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# 304631.

The San Antonio Independent School District (the "district"), which you represent, received a request for information related to the district's selection and hiring process for police chief as it pertains to the requestor's client. You claim that the submitted information is excepted from disclosure under sections 552.111 and 552.122 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. This exception 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, 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* ORD 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).

You contend that the submitted information is excepted under section 552.111. You state that the submitted information consists of advice, opinions, or recommendations regarding candidates for the position of district chief of police that were created by district personnel "in response to serious concerns that had arisen from the past direction and operation" of this law enforcement department. You argue that, if released, the submitted information would discourage frank and open discussions within the district and have a negative effect on the district. However, information pertaining to personnel matters may only be withheld under section 552.111 when it is a matter of broad scope that affects the governmental body's policy mission. Upon review, we conclude you have failed to establish that the submitted information concerns personnel matters that rise to the level of policymaking. Therefore, you have not demonstrated the applicability of section 552.111 to this information, and none of it may be withheld on this basis.

Section 552.122(b) of the Government Code excepts from disclosure test items developed by a licensing agency or governmental body. Gov't Code § 552.122(b). In Open Records Decision No. 626 (1994), this office determined that the term "test item" in section 552.122 includes any standard means by which an individual's or group's knowledge or ability in a particular area is evaluated, but does not encompass evaluations of an employee's overall job performance or suitability. Whether information falls within the section 552.122 exception must be determined on a case-by-case basis. *Id.* Traditionally, this office has applied section 552.122 where release of "test items" might compromise the effectiveness of future examinations. *Id.* at 4-5; *see also* Open Records Decision No. 118 (1976). Section 552.122 also protects the answers to test questions when the answers might reveal the questions themselves. *See* Attorney General Opinion JM-640 at 3 (1987); ORD 626 at 8.

You seek to withhold the submitted information under section 552.122. Having considered your arguments and reviewed the information at issue, we conclude that interview questions three, five, and nine qualify as test items for the purposes of section 552.122(b). We also conclude that the release of the information contained in the "Listen For" and "Comments" sections to those questions would tend to reveal the questions themselves. Accordingly, we conclude that the district may withhold interview questions three, five, and nine, along with the information contained in the "Listen For" and "Comments" sections to those questions, under section 552.122 of the Government Code. We find, however, that the remaining interview questions, "Individual Assessment Form," and "Overall Assessment" form are general questions evaluating an applicant's general workplace skills, subjective ability to

respond to particular situations, and overall suitability for employment, and do not test any specific knowledge of an applicant. Accordingly, we determine that the remaining interview questions, "Individual Assessment Form," and "Overall Assessment" form are not test items under section 552.122(b) and therefore may not be withheld on this basis.

In summary, the district may withhold interview questions three, five, and nine, along with the information contained in the "Listen For" and "Comments" sections to those questions, under section 552.122 of the Government Code. The remaining 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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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 challenge 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,



Chanita Chantaplin-McLelland
Assistant Attorney General
Open Records Division

CC/mcf

Ref: ID# 304631

Enc.: Submitted documents

cc: Ms. Jameene Yvonne Banks
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(w/o enclosures)