



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 20, 2009

Mr. Fortunato G. Paredes  
Escamilla & Poneck, Inc.  
216 West Village Boulevard, Suite 202  
Laredo, Texas 78041

OR2009-06892

Dear Mr. Paredes:

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# 343767.

The Clint Independent School District (the "district"), which you represent, received a request for thirteen categories of information related to the requestor's client, an employee of the district. You state the district has released some of the requested information. You also state the district redacted some of the submitted information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.<sup>1</sup> You claim that the submitted information is excepted from disclosure under sections 552.101, 552.102, and 552.111 of the Government Code.<sup>2</sup> 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

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<sup>1</sup>We note the United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office FERPA does not permit state and local educational authorities to disclose to this office, without parental or student consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act. The DOE has determined FERPA determinations must be made by the educational authority in possession of the education records. We have posted a copy of the letter from the DOE to this office on the Attorney General's website: <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

<sup>2</sup>Although you raise section 552.026 of the Government Code as an exception to disclosure, we note that section 552.026 is not an exception to disclosure. Rather, section 552.026 provides that the Act does not require the release of information contained in education records except in conformity with the Family Educational Rights and Privacy Act of 1974 ("FERPA"). Gov't Code § 552.026.

section 21.355 of the Education Code, which provides that “[a] document evaluating the performance of a teacher or administrator is confidential.” Educ. Code § 21.355. This office has interpreted section 21.355 to apply to any document that evaluates, as that term is commonly understood, the performance of a teacher or an administrator. *See* Open Records Decision No. 643 (1996). In Open Records Decision No. 643, we determined for purposes of section 21.355, the word “teacher” means a person who is required to, and does in fact, hold a teaching certificate under subchapter B of chapter 21 of the Education Code or a school district teaching permit under section 21.055, and who is engaged in the process of teaching, as that term is commonly defined, at the time of the evaluation. *See* ORD 643 at 4. The Third Court of Appeals has held that a written reprimand constitutes an evaluation for purposes of section 21.355. *See Abbott v. North East Indep. Sch. Dist.*, 212 S.W.3rd 364 (Tex. App.—Austin, 2006).

You assert the submitted teacher performance evaluations in Exhibit C and the teacher conference letter and intervention plan in Exhibit D, which you state constitute reprimands, are confidential under section 21.355. You represent that the employee named in the present request was serving the district as a certified educator at the time the submitted evaluations. Thus, based on your representations and our review, we conclude Exhibits C and D are generally confidential under section 21.355.

However, we note that section 21.352(c) of the Education Code specifically provides that “[e]ach teacher is entitled to receive a written copy of the evaluation on its completion.” In this instance, the requestor represents the employee whose evaluations are at issue. Therefore, to the extent the evaluations in Exhibit C and D are the type contemplated in section 21.352, the requestor has a right of access to this information under section 21.352(c). However, if the requestor does not have a right of access under section 21.352(c), then Exhibits C and D are excepted from disclosure pursuant to section 552.101 in conjunction with section 21.355 of the Education Code.

You claim portions of the named teacher’s college transcripts in Exhibit B are excepted under section 552.102(b). This section excepts from disclosure all information in transcripts of professional public school employees other than the employee’s name, the courses taken, and the degree obtained. Gov’t Code § 552.102(b); Open Records Decision No. 526 (1989). However, section 552.102(b) was enacted to protect the privacy interests of public school employees, and the requestor represents the employee whose transcripts are at issue. Section 552.023(a) gives a person or a person’s authorized representative a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from disclosure by laws intended to protect that person’s privacy interests. *See* Gov’t Code § 552.023; Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual or authorized representative asks governmental body to provide information concerning that individual). Accordingly, the requestor has a right of access to his client’s transcripts, and they may not be withheld from him under section 552.102(b).

You assert that Exhibit F is excepted 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.” See Gov’t Code § 552.111. Section 552.111 encompasses the deliberative process privilege. See Open Records Decision No. 615 at 2 (1993). In Open Records Decision No. 615, 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, and opinions reflecting the policymaking processes of the governmental body. See *City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 364 (Tex. 2000); see also *Arlington Indep. Sch. Dist. v. Tex. Attorney Gen.*, 37 S.W.3d 152 (Tex. App.—Austin, 2001, no pet.). The purpose of section 552.111 is “to protect from public disclosure advice and opinions on policy matters and to encourage frank and open discussion within the agency in connection with its decision-making processes.” *Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.—San Antonio 1982, writ ref’d n.r.e.).

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. See ORD 615 at 5-6. However, 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). Section 552.111 does not protect facts and written observations of facts and events that are severable from advice, opinions, and recommendations. See ORD 615 at 5. But, if factual information is so inextricably intertwined with material involving advice, opinion, or recommendation as to make severance of the factual data impractical, the factual information also may be withheld under section 552.111. See Open Records Decision No. 313 at 3 (1982).

You state that the information within Exhibit F consists of recommendations related to the employee complaint arising from the teacher evaluation at issue. However, Exhibit F appears to consist either of general administrative information or information pertaining to an individual personnel matter that does not relate to policymaking. Therefore, we find that you have failed to demonstrate how the submitted recommendation reflects the policymaking process of the district. See Gov’t Code § 552.301(e)(1) (requiring the governmental body to explain the applicability of the raised exception). Accordingly, no portion of Exhibit F may be withheld under section 552.111 of the Government Code.

In summary, to the extent the evaluations in Exhibit C and D are the type contemplated in section 21.352, the requestor has a right of access to this information and it must be released pursuant to section 21.352(c). If the requestor does not have a right of access under section 21.352(c), then Exhibits C and D must be withheld under section 552.101 in

conjunction with section 21.355 of the Education Code. The remaining information must be released.<sup>3</sup>

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Sarah Casterline  
Assistant Attorney General  
Open Records Division

SEC/jb

Ref: ID# 343767

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>3</sup>We note the requestor has a special right of access to information contained in the records that is protected by exceptions and laws designed to protect his privacy. Gov't Code § 552.023 (person or person's authorized representative has special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person's privacy interests). Should the district receive another request for these same records from a person who would not have a special right of access to this information, the district should resubmit this same information and request another ruling from this office. *See id.* §§ 552.301(a), .302.