



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 6, 2010

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

OR2010-00218

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# 366368.

The United Independent School District (the "district"), which you represent, received a request for the requestor's application for employment with the district and all documentation that disqualified her from employment. You state that the district has released some of the requested information to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.111 of the Government Code. 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. Section 552.101 encompasses the doctrine of common-law privacy. Common-law privacy protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *Id.* at 681-82. You seek to withhold individual's names in Exhibit B under common-law privacy. We note that names of individuals are not highly intimate or embarrassing. *See Open Records Decision No. 455 at 7 (1987)* (birth dates, names, and addresses are not protected by privacy). Further, the submitted information,

which you seek to withhold in its entirety, pertains solely to a prospective public employee's qualifications for employment and the district's reasons for disqualifying the prospective employee from employment. This office has stated, in numerous decisions, that information pertaining to the work conduct, job performance, and qualifications of public employees is subject to a legitimate public interest and, therefore, generally not protected from disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (public employee's job performance does not generally constitute employee's private affairs), 455 (public employee's job performance or abilities generally not protected by privacy), 444 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employee), 423 at 2 (1984) (scope of public employee privacy is narrow). Upon review, we find that the submitted information is either not intimate or embarrassing or is of legitimate public interest. Accordingly, the district may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy.

Next, you claim Exhibit C is excepted under section 552.111 of the Government Code, which 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 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 contend that the document at Exhibit C is excepted under section 552.111. However, the information at issue pertains to a specific employment decision by the district. This information encompasses a routine internal personnel matter and does not pertain to a policymaking issue of the district. Accordingly, we find that you have failed to demonstrate that the information at issue consists of advice, recommendation, and opinion that reflects the policymaking processes of the district. Accordingly, Exhibit C may not be withheld under section 552.111. As you raise no further exceptions against the disclosure of the submitted information, it must be released to the requestor.

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, toll free, at (888) 672-6787.

Sincerely,



Laura Ream Lemus  
Assistant Attorney General  
Open Records Division

LRL/jb

Ref: ID# 366368

Enc. Submitted documents

c: Requestor  
(w/o enclosures)