ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 18, 2010

Ms. Christine Badillo
Walsh, Anderson, Brown, Aldridge & Gallegos, P.C.
For Academy Independent School District
P.O. Box 2156
Austin, Texas 78768

OR2010-02473

Dear Ms. Badillo:

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# 370507.

The Academy Independent School District (the "district"), which you represent, received a request for personnel records, including conduct or performance records, pertaining to a named district employee, as well as any witness statements regarding a specified incident involving the named employee. You state the district has provided most of the requested information to the requestor, with certain redactions agreed upon by the requestor. You also state the district has redacted student-identifying information from the information provided to the requestor and the information submitted to this office pursuant to the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232(a).[1] You claim the submitted e-mails are excepted from disclosure under section 552.111 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also received and considered comments submitted by the requestor. *See* Gov't

[1]The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office that FERPA does not permit state and local educational authorities to disclose to this office, without parental 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 that 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.

Code § 552.304 (interested party may submit written comments regarding availability of requested information).

Initially, we note a portion of the submitted information was created after the date the request for information was received by the district. Thus, this information, which we have marked, is not responsive to the request. This decision does not address the public availability of the non-responsive information, and that information need not be released.

You claim the submitted e-mails are excepted from disclosure under the deliberative process privilege encompassed by section 552.111 of the Government Code. *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 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). 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 assert the submitted e-mails are protected by the deliberative process privilege because they contain communications between the district's superintendent and members of the district's board of trustees that "do not reflect routine internal administrative matters[,]" but rather pertain to "a complex personnel matter" of a specific nature. Thus, based on your representations, the e-mails pertain to personnel matters. As previously stated, the deliberative process privilege excepts communications pertaining to personnel matters of broad scope that affect a governmental body's policy mission. *See* ORD 631 at 3. In this instance, however, you acknowledge, and the information reflects, the e-mails pertain to personnel issues involving one district employee, and you have not explained how the e-mails pertain to personnel matters of broad scope that affect the district's policy mission.

Therefore, you have failed to demonstrate how the deliberative process privilege applies to the submitted e-mails. Accordingly, the submitted e-mails may not be withheld under section 552.111 of the Government Code. As you have claimed no other exceptions to disclosure, the submitted information must be released.

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, 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,

Leah B. Wingerson

Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

Ref: ID# 370507

Enc. Submitted documents

c: Requestor
(w/o enclosures)