



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 10, 2011

Mr. Andrew B. Thompson
Assistant General Counsel
Corpus Christi Independent School District
P.O. Box 110
Corpus Christi, Texas 78403-0110

OR2011-06443

Dear Mr. Thompson:

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# 417032.

The Corpus Christi Independent School District (the "district") received a request for the following: 1) information related to any district initiatives, programs, policies, or practices implemented to improve student behavior, including but not limited to any initiatives related to character education or use of profanity; 2) copies of all citations issued to district students for disrupting the classroom, using profanity, or disorderly conduct at school since August 1, 2010; 3) all information related to district or district police department policies or practices for issuing citations to district students for disrupting the classroom, using profanity, or disorderly conduct at school; and 4) the district procedures manual or handbook for district school resource officers or district police officers.¹ You state you will release the information responsive categories two and three to the requestor. You claim that the submitted information, which is responsive to category one, is excepted from disclosure

¹You note that the district requested clarification of the first category of information requested. See Gov't Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request); see also *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

under section 552.111 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.²

Initially, we note you have not submitted information responsive to category four of the request. To the extent information responsive to this portion of the request existed on the date the district received the request, we assume you have released it. If you have not released any such information, you must do so at this time. *See Gov't Code* §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

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 section 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 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). We determined section 552.111 excepts from disclosure only those internal communications consisting of advice, recommendations, and opinions reflecting the policymaking processes of the governmental body. *See* ORD 615 at 5. A governmental body's policymaking functions do not encompass internal administrative or personnel matters, and disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. *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). 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).

Further, 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

²We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

information also may be withheld under section 552.111. See Open Records Decision No. 313 at 3 (1982).

Section 552.111 can also encompass communications between a governmental body and a third party with a privity of interest. See Open Records Decision Nos. 631 at 2 (section 552.111 encompasses information created for governmental body by outside consultant acting under governmental body's authority), 561 at 9 (1990) (section 552.111 encompasses communications with party with which governmental body has privity of interest or common deliberative process). When determining if an interagency memorandum is excepted from disclosure under section 552.111, we must consider whether the agencies between which the memorandum is passed share a privity of interest or common deliberative process with regard to the policy matter at issue. See *id.* For section 552.111 to apply, the governmental body must identify the third party and explain the nature of its relationship with the governmental body. Section 552.111 is not applicable to a communication between the governmental body and a third party unless the governmental body establishes it has a privity of interest or common deliberative process with the third party. See *id.*

This office has also concluded a preliminary draft of a policymaking document that is intended for release in final form is excepted from disclosure in its entirety under section 552.111 because such a draft necessarily represents the advice, recommendations, or opinions of the drafter as to the form and content of the final document. See Open Records Decision No. 559 at 2 (1990). Section 552.111 protects factual information in the draft that also will be included in the final version of the document. See *id.* at 2-3. Thus, section 552.111 encompasses the entire contents, including comments, underlining, deletions, and proofreading marks, of a preliminary draft of a policymaking document that will be released to the public in its final form. See *id.* at 2.

You assert the submitted information was generated by district officials and personnel for the purpose of making policy recommendations to the district's Board of Trustees. You state the submitted information constitutes advice, opinions, or recommendations regarding policymaking matters. Upon review, we agree the draft document we have marked relates to policymaking. However, you do not inform us whether the district intends to release this document in its final form. Therefore, if the draft document will be released in its final form, then the district may withhold the draft document we have marked in its entirety under section 552.111 of the Government Code. If the marked draft document will not be released in its final form, then this information may not be withheld in its entirety on the basis of section 552.111. In that instance, we have marked the portions of the draft document that consist of advice, opinion, or recommendation regarding policy matters of the district. Upon review, we find portions of the remaining information, which we have marked, constitute advice, opinion, or recommendations regarding policy matters of the district. Accordingly, the district may withhold the information we have marked under section 552.111 of the Government Code. However, we find some of the remaining information consists of either general administrative information that does not relate to policymaking or information that

is purely factual in nature. You have failed to demonstrate, and the information does not reflect on its face, how this information is excepted under section 552.111. Additionally, some of the remaining information consists of the mental impressions and opinions of outside community members and has been communicated with third parties. You have not demonstrated how the district shares a privity of interest or common deliberative process with these community members or third parties. *See* ORD 561. Accordingly, we find none of the remaining information may be withheld under section 552.111 of the Government Code.

We note the information at issue contains personal e-mail addresses. Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body," unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c).³ *See* Gov't Code § 552.137(a)-(c). The e-mail addresses listed in the information at issue is not specifically excluded by section 552.137(c). As such, these e-mail addresses, which we have marked, must be withheld under section 552.137, unless the owners of the addresses have affirmatively consented to their release.⁴ *See id.* § 552.137(b).

In summary, if the draft document we have marked will be released in its final form, then the district may withhold this document in its entirety under section 552.111 of the Government Code. If the draft document will not be released to the public in its final form, the district may withhold the information we have marked in it under section 552.111 of the Government Code. In either instance, the district may withhold the remaining information we have marked under section 552.111 of the Government Code. The district must withhold the personal e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners of the addresses have affirmatively consented to their release. The remaining 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.

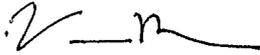
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and

³The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

⁴Open Records Decision No. 684 (2009) serves as a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including e-mail addresses of members of the public under section 552.137, without the necessity of requesting an attorney general decision.

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,



Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/dls

Ref: ID# 417032

Enc. Submitted documents

c: Requestor
(w/o enclosures)