



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

June 3, 2011

Ms. Ylise Janssen  
Senior School Law Attorney  
Austin Independent School District  
1111 West Sixth Street  
Austin, Texas 78703

OR2011-07861

Dear Ms. Janssen:

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# 419587.

The Austin Independent School District (the "district") received a request for any communications between a named employee and the district referencing (1) recess or the elimination of recess, (2) the 2011-2012 district budget, and (3) the training of the named employee for a position with the district. You state the district has released some information to the requestor. You claim 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. This section encompasses information protected by other statutes, such as 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 at 3 (1996). In Open Records Decision No. 643, we determined for purposes of section 21.355, the word "administrator" in section 21.355 means a person who is required to, and does in fact, hold an administrator's certificate under subchapter B of chapter 21 of the Education Code, and is performing the functions of an administrator, as that term is commonly defined, at the time of the evaluation. *See* ORD 643 at 4.

You contend that the submitted information in Exhibit C is confidential under section 21.355. You state, and provide documentation showing, that the submitted information in Exhibit C pertains to a district employee who is a certified administrator. Upon review, however, we find that you have failed to demonstrate how the submitted information in Exhibit C consists of "document[s] evaluating the performance of a teacher or administrator" as contemplated by section 21.355. Educ. Code § 21.355. Accordingly, we conclude the district may not withhold the submitted information in Exhibit C based on section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code.

Section 552.111 excepts from public disclosure "[a]n 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. Section 552.111 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 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). Moreover, 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).

This office has also concluded a preliminary draft of a document that is intended for public release in its final form necessarily represents the drafter's advice, opinion, and recommendation with regard to the form and content of the final document, so as to be excepted from disclosure under section 552.111. *See* Open Records Decision No. 559 at 2 (1990) (applying statutory predecessor). 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 state the submitted budget documents in Exhibit B are being developed for presentation to the district's board of trustees as part of a policymaking process to set the district's budget for the 2011-2012 school year. Further, you state the submitted budget documents in Exhibit B represent preliminary drafts and are intended for public release. Based on your representations and our review, we agree the district may withhold the submitted budget documents in Exhibit B under section 552.111 of the Government Code.

We note the submitted information in Exhibit C contains information that may be subject to section 552.117(a)(1) of the Government Code.<sup>1</sup> Section 552.117(a)(1) excepts from disclosure the home address and telephone number, social security number, and family member information of a current or former official or employee of a governmental body who requests that the information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117(a)(1). Section 552.117 also encompasses personal cellular telephone and pager numbers, provided that a governmental body does not pay for the cellular telephone or pager service. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may be withheld under section 552.117(a)(1) only on behalf of a current or former official or employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. We have marked a cellular telephone number in the remaining information in Exhibit C under section 552.117(a)(1) of the Government Code. The district must withhold this cellular telephone number under section 552.117(a)(1) to the extent the employee concerned timely elected under section 552.024 to keep her information confidential; however, the district may only withhold the cellular telephone number we have marked if the employee concerned paid for the cellular telephone service with her own funds.

In summary, the district may withhold the submitted budget documents in Exhibit B under section 552.111 of the Government Code. The district must withhold the cellular telephone number we have marked in the submitted information in Exhibit C under section 552.117(a)(1) of the Government Code to the extent the employee concerned timely elected under section 552.024 of the Government Code to keep her information confidential; however, the district may only withhold the cellular telephone number we have marked if the employee concerned paid for the cellular telephone service with her own funds. As you raise no further exceptions to disclosure, the remaining information must be released to the requestor.

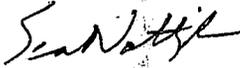
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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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,



Sean Nottingham  
Assistant Attorney General  
Open Records Division

SN/bs

Ref: ID# 419587

Enc. Submitted documents

c: Requestor  
(w/o enclosures)