



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 8, 2014

Mr. George Russell Meurer
Counsel for Laredo Community College
Kazen, Meurer & Pérez, L.L.P.
211 Calle Del Norte, Suite 100
Laredo, Texas 78041

OR2014-00511

Dear Mr. Meurer:

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# 510480.

Laredo Community College (the "college"), which you represent, received a request for all communications exchanged between two specified college employees throughout a six-month time period and any reports or communications of disciplinary action involving the two employees. You state the college has released some of the information. You also state the college has redacted personal cellular telephone numbers subject to section 552.117 of the Government Code,¹ and personal e-mail addresses subject to section 552.137.² 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.

¹Section 552.117 of the Government Code excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body. *See* Gov't Code § 552.117(a)(1). Section 552.024 of the Government Code authorizes a governmental body to withhold information subject to section 552.117 without requesting a decision from this office if the current or former employee or official chooses not to allow public access to the information. *See id.* § 552.024(c)(2).

²Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold certain information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

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, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *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 satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation. Id.* at 683. However, this office has concluded the public has a legitimate interest in information that relates to public employees and their conduct in the workplace. *See, e.g.*, Open Records Decision Nos. 562 at 10 (1990) (personnel file information does not involve most intimate aspects of human affairs but in fact touches on matters of legitimate public concern), 470 at 4 (1987) (job performance does not generally constitute public employee’s private affairs), 444 at 3 (1986) (public has obvious interest in information concerning qualifications and performance of government employees), 405 at 2 (1983) (manner in which public employee’s job was performed cannot be said to be of minimal public interest), 329 (1982) (reasons for employee’s resignation ordinarily not private). Upon review, we find none of the submitted information is highly intimate or embarrassing and not of legitimate public concern. Therefore, the college may not withhold any portion of the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.111 of the Government Code excepts from 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, opinions, recommendations, and other material reflecting the policymaking processes of the governmental body. *See* Open Records Decision 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).

Further, section 552.111 does not protect facts and written observations of facts and events that are severable from advice, opinions, and recommendations. *Arlington Indep. Sch. Dist. v. Tex. Attorney Gen.*, 37 S.W.3d 152, 157 (Tex. App.—Austin 2001, no pet.); see Open Records Decision No. 313 at 3 (1982). But, if factual information is so inextricably intertwined with material involving advice, opinion, or recommendation so as to make severance of the factual data impractical, the factual information may also be withheld under section 552.111. See Open Records Decision No. 313 at 3 (1982).

You assert a portion of the submitted information, marked as Exhibit C, contains communications and opinions of college employees regarding the college's policy for credential and qualification requirements for dean positions. You further assert the information marked as Exhibits E, F, and H contains communications between college employees regarding the college's reaccreditation process. You state release of these communications would have a chilling effect on free discussion and open exchange of employees' opinions and advice on the college's policymaking issues. Based on your representations and our review, we agree the information marked as Exhibits C, E, F, and H pertain to administrative and personnel matters of broad scope that affect the college's policy mission. Accordingly, the college may withhold Exhibits C, E, F, and H under section 552.111 of the Government Code.

In summary, the college may withhold the information marked as Exhibits C, E, F, and H under section 552.111 of the Government Code. 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 responsibilities, please visit our website at http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Miriam A. Khalifa
Assistant Attorney General
Open Records Division

MAK/akg

Ref: ID# 510480

Enc. Submitted documents

c: Requestor
(w/o enclosures)