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ATTORNEY GENERAL OF TEXAS

October 17, 2016

Mr. Robert Russo
Counsel for Judson Independent School District
Walsh Gallegos Trevino Russo & Kyle
P.O. Box 460606
San Antonio, Texas 78246

OR2016-23239

Dear Mr. Russo:

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# 630597.

The Judson Independent School District (the "district"), which you represent, received a request for the results of a specified office climate survey. You claim the submitted information is excepted from disclosure under section 552.111 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note some of the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). The submitted information includes a completed evaluation that is subject to section 552.022(a)(1). The district must release the completed evaluation pursuant to section 552.022(a)(1) unless it is excepted from disclosure under section 552.108 of the Government Code or is made confidential under the Act or other law. *See id.* You seek to withhold the information subject to section 552.022(a)(1) under section 552.111 of

the Government Code. However, section 552.111 is discretionary in nature and does not make information confidential under the Act. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 470 at 7 (1987) (statutory predecessor to section 552.111 subject to waiver). Therefore, the information subject to section 552.022, which we have marked, may not be withheld under section 552.111 of the Government Code. However, we will consider your argument under section 552.111 for the information not subject to section 552.022.

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. 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, writ ref’d n.r.e.); 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).

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 (Tex. App.—Austin 2001, no pet.); *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).

You state the information at issue consists of employees’ responses to an office climate survey that was used to solicit employees’ opinions on a variety of issues. You state the employees were acting at the request of the district to evaluate a matter within the district’s authority. Thus, you explain this information is reflective of the district’s deliberative process and consists of advice, opinions, and recommendations of the district pertaining to the district’s policymaking functions. Based on your representations and our review of the

information at issue, we find the district has demonstrated portions of the information at issue, which we have marked, consist of advice, opinions, or recommendations on the policymaking matters of the district. Thus, the district may withhold the marked information under section 552.111 of the Government Code. Upon review, however, we find the remaining information at issue is general administrative and purely factual information or does not pertain to policymaking. Thus, we find you have failed to show the remaining information at issue consists of internal communications containing advice, opinions, or recommendations on the policymaking matters of the district. Accordingly, the district may not withhold the remaining information at issue under section 552.111 of the Government Code.

In summary, the district may withhold the information we marked under section 552.111 of the Government Code. The district must release the remaining information, including the marked information subject to section 552.022(a)(1) of the Government Code.

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,



Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/bw

Ref: ID# 630597

Enc. Submitted documents

c: Requestor
(w/o enclosures)