



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 30, 1998

Mr. Juan J. Cruz
Escamilla & Poneck, Inc.
1200 South Texas Building
603 Navarro Street
San Antonio, Texas 78205-1826

OR98-3292

Dear Mr. Cruz:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code, the Open Records Act (the "act"). Your request was assigned ID# 121168.

The San Antonio Independent School District (the "district") received a request for various information relating to a named district employee. The requestor is the attorney for the individual named in the request. You seek to withhold some of the requested information under section 552.111 of the Government Code. We also understand you to contend that other responsive documents "are not public records" and are thus not subject to the act.

Section 552.111 excepts interagency and intra-agency memoranda and letters, but only to the extent that they contain advice, opinion, or recommendation intended for use in the entity's policymaking process. Open Records Decision No. 615 (1993). The purpose of this section is "to protect from public disclosure advice and opinions *on policymatters* and to encourage frank and open discussion within the agency in connection with its decision-making processes." *Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.--San Antonio 1982, writ ref'd n.r.e.) (emphasis added). In Open Records Decision No. 615 at 5, this office held that

to come within the [section 552.111] exception, information must be related to the *policymaking* functions of the governmental body. An agency's policymaking functions do not encompass routine internal administrative and personnel matters . . . [Emphasis in original.]

The information for which you claim the protection of section 552.111 consists of memoranda between district personnel regarding the employee named in the request. Having

reviewed these materials, we conclude that they do not relate to policy making functions of the district, but rather to personnel issues concerning the individual who is the subject of the request. Accordingly, we do not find that these materials are protected from disclosure by section 552.111.

You also appear to claim that the submitted documents "contain personal [sic] notes of the upper echelon management of the school district" which are "personal notes of an individual employee in his sole possession and made solely for his own use [and] are not public records." You cite Open Records Decisions Nos. 77 (1975) and 450 (1986) as authority for the information in question not being subject to the act.

Section 552.021 of the act provides for public access to "public information." Section 552.022 defines "public information" as "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business . . . (1) by a governmental body" . . . or (2) for a governmental body and the governmental body owns the information or has a right of access to it." While Open Records Decision No. 77 found that personal notes made by individual faculty members for their own use as memory aids were not subject to the act, Open Records Decision No. 450 found that notes of appraisers taken in the course of teacher appraisals were public information. *See also* Open Records Decision Nos. 635 (1995) (public official's or employee's appointment calendar, including personal entries, may be subject to act); 626 (1994) (handwritten notes taken during oral interview by Texas Department of Public Safety promotion board members public information); 145 (1976) (handwritten notes on university president's calendar not public information); 120 (1976) (faculty members' written evaluations of doctoral student's qualifying exam subject to act); 116 (1975) (portions of desk calendar kept by governor's aide and aide's notes made solely for his own informational purposes not public information).

In our opinion, the information at issue was created by district employees in connection with official business of the district and is thus public information subject to the act. Accordingly, none of the information you submitted as responsive to the request may be withheld on the theory that it is not "public information" subject to the act.

We note that some of the information at issue may be protected from release to the public by common-law privacy or provisions of law designed to protect privacy. However, the requestor here is the attorney for, and is presumably seeking the records on behalf of, the individual whose privacy interests would be implicated by public disclosure of the information. Thus, the information may not be withheld from the requestor here on such privacy grounds. *See* Gov't Code §552.023 (information may not be withheld from individual or his representative under law intended to protect that individual's privacy interests).

Finally, we note that the material you submitted appears to contain information identifying district students. Section 552.026 of the Government Code provides as follows:

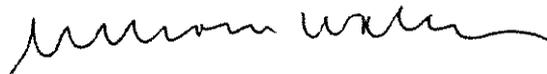
This chapter does not require the release of information contained in education records of an educational agency or institution, except in conformity with the Family Educational Rights and Privacy Act of 1974, Sec. 513, Pub. L. No. 93-380, 20 U.S.C. Sec. 1232g.

The Family Educational Rights and Privacy Act of 1974 ("FERPA") provides that no federal funds will be made available under any applicable program to an educational agency or institution that releases personally identifiable information (other than directory information) contained in a student's education records to anyone but certain numerated federal, state, and local officials and institutions, unless otherwise authorized by the student's parent. *See* 20 U.S.C. § 1232g(b)(1). "Education records" means those records that contain information directly related to a student and are maintained by an educational agency or institution or by a person acting for such agency or institution. 20 U.S.C. § 1232g(a)(4)(A). Information must be withheld from required public disclosure under FERPA only to the extent "reasonable and necessary to avoid personally identifying a particular student." Open Records Decision Nos. 332 (1982); 206 (1978). *See also* Gov't Code §552.114(a) ("information in a student record at an educational institution funded wholly or partly by state revenue" must be withheld).

You must withhold student-identifying information in the submitted records unless you receive permission to release the information from the parent of the student. Apart from such student-identifying information, you must release the submitted information to the requestor.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



William Walker
Assistant Attorney General
Open Records Division

WMW/ch

Ref: ID# 121168

Enclosures: Submitted documents

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(w/o enclosures)