



September 30, 1999

Ms. Nancy H. Reyes  
Escamilla & Poneck, Inc.  
1200 South Texas Building  
603 Navarro Street  
San Antonio, Texas 78205-1826

OR99-2758

Dear Ms Reyes:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 127665

The San Antonio Independent School District (the "district"), which you represent, received a request for information related to a particular asbestos investigation report. You assert that you have released a redacted version of the responsive report and claim that the redacted portion as well as additional responsive information is excepted from public disclosure by sections 552.101 and 552.111 of the Government Code.<sup>1</sup> You have supplied the subject information to this office for review. We have considered the exceptions you raise, and reviewed the submitted information:

Section 552.101 excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. This section encompasses the common-law right to privacy. Section 552.102 of the Government Code protects "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." The protection of section 552.102 is the same as that of the common-law right to privacy under section 552.101. *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.). Information may be withheld from the public under the common-law right of privacy when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of

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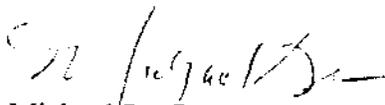
<sup>1</sup>You also raise sections 552.103 and 552.107 but as you provide no argument in support of these exceptions, they shall not be addressed. You did not timely raise section 552.102, but as this section excepts the same information as the common-law privacy aspect of section 552.101, the argument will be addressed under that section.

ordinary sensibilities and (2) there is no legitimate public interest in its disclosure. *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977); Open Records Decision No. 611 at 1 (1992). From our review of the submitted documents, we conclude that they do not contain information protected by the common-law right of privacy. None of the information may be withheld under section 552.101 of the Government Code.

Section 552.111 of the Government Code excepts from required public disclosure 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 at 5 (1993). An agency's policymaking functions do not encompass internal administrative or personnel matters. Open Records Decision No. 615 at 5-6 (1993). Further, section 552.111 does not protect facts and written observation of facts and events that are severable from advice, opinions, and recommendation, *see* Open Records Decision No. 615 at 5 (1993). To be protected by section 552.111, information must be prepared by a person or entity with an official reason or duty to provide the information in question. *See also* Open Records Decision Nos. 283 (1981), 273 (1981). The ultimate test to which these factors are directed is whether the governmental entity intended the advice, opinion, or recommendation to play a role in its decision-making process. *See* Open Records Decision No. 464 (1987). In this case, most of the information consists of neutral recitations of facts about a specific incident. However, where the information constitutes advice, opinion, or recommendation intended for use in the entity's policymaking process, we have marked it to indicate that it may be withheld under section 552.111 of the Government Code. The remaining information must be released.

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.

Sincerely,



Michael Jay Burns  
Assistant Attorney General  
Open Records Division

MJB/ch

Ref: ID# 127665

Encl. Submitted documents

cc: Ms Toni Reyes  
San Antonio Paraprofessionals and Classified Support Personnel  
1401 N. Main Avenue  
San Antonio, Texas, 78212-4306  
(w/o enclosures)