



December 18, 1999

Ms. Jennifer L. Lehmann  
Escamilla & Poneck, Inc.  
1200 South Texas Building  
603 Navarro Street  
San Antonio, Texas 78205-1826

OR99-3742

Dear Ms. Lehmann:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 130515.

The San Antonio Independent School District (the "district"), which you represent, received a request for reports "containing information obtained through interviews with Navarro Achievement Center personnel." You claim that the requested information is excepted from required public disclosure by sections 552.101, 552.102, 552.111, and 552.131 of the Government Code. You have submitted the documents at issue.

You explain that the information at issue was created in connection with the district's study of the climate and environment "of the school and its staff, in order to determine what the staff felt the internal problems were and what possible remedies the faculty thought should be pursued." In conducting the study, the district gathered input from all of the teachers on campus. The study asked three questions and allowed the respondents to express their comments as to each question. You have provided this office with the questions and the transcribed narrative comments. You contend that release of the requested study results will inhibit the district's ability to gather candid, truthful responses from professional staff in its site-based decision-making process. We have considered your arguments.

Section 552.111 excepts "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408

(Tex. App.--Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. An agency's policymaking functions, however, do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. Open Records Decision No. 615 at 5-6 (1993). In addition, section 552.111 does not except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. *Id.* at 4-5.

You assert that the study reflects the broad scope of the district's educational policy mission. We agree that the responses to the study in this instance relate to the district's policymaking functions. *See* Open Records Decision No. 631 (1995). We have found that narrative responses to surveys may be withheld under section 552.111. Open Records Decision No. 464 at 5 (1987). These comments reflect the respondent's advice or opinion. Open Records Decision No. 209 at 2 (1978). Consequently, we find that the transcribed narrative comments and document entitled "List II" may be withheld under section 552.111. However, the document entitled "List I," containing a list of names and evidencing the different factions on campus, is not excepted under section 552.111 because it does not consist of advice, opinion, or recommendation relating to policy making. Because List I is not excepted under section 552.111, we will consider your other claimed exceptions.

Section 552.102 excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). In *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.—Austin 1983, writ ref'd n.r.e.), the court ruled that the test to be applied to information claimed to be protected under section 552.102 is the same as the test formulated by the Texas Supreme Court in *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977), for information claimed to be protected under the doctrine of common-law privacy as incorporated by section 552.101 of the act. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 552.101 also encompasses common-law privacy and excepts from disclosure private facts about an individual. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Therefore, information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 at 1 (1992). We conclude that List I does not contain highly intimate and embarrassing information, and there is a legitimate public interest in the information.

Next, you argue that section 552.131 of the Government Code excepts the information from public disclosure. Section 552.131 provides in relevant part as follows:

(a) "Informer" means a student or former student or an employee or former employee of a school district who has furnished a report of another person's or persons' possible violation of criminal, civil, or regulatory law to the school district or the proper regulatory enforcement authority.

(b) An informer's name or information that would substantially reveal the identity of an informer is excepted from [required public disclosure].

List I shows which teacher supports which school administrator. The document does not show that the persons on the list furnished a report of another person's possible violation of criminal, civil, or regulatory law to the school district. Thus, we would conclude that section 552.131 does not except List I from public disclosure. Because the exceptions the district claims do not except List I from public disclosure, the district must release List I.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Yen-Ha Le  
Assistant Attorney General  
Open Records Division

YHL/ljp

Ref: ID# 130515

Encl. Submitted documents

cc: Mr. Bob Comeaux  
Field Representative  
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(w/o enclosures)