



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 31, 2006

Ms. Christine Badillo
Walsh, Anderson, Brown, Schulze & Aldridge, P.C.
P.O. Box 2156
Austin, Texas 78768

OR2006-10205

Dear Ms. Badillo:

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# 258182.

The Lake Travis Independent School District (the "district"), which you represent, received five requests from the same requestor for the following: 1) memoranda authored or approved by a named individual, 2) documents authorizing payments to a named individual related to the maintenance of the district's website, 3) purchase orders and payments made by the district for specified software, 4) purchase orders and payments made by the district for specified manuals, and 5) manuals available to the district for the use of specified software. You state that the district has released some of the requested information but claim that the remaining requested information is excepted from disclosure under sections 552.111, 552.136, and 552.137 of the Government Code. You also contend that some of the requested information is subject to section 552.027 of the Government Code. We have considered your arguments and reviewed the submitted information, a portion of which consists of a representative sample.¹

Initially, we address your argument that the information responsive to the fifth request, which you have submitted as Exhibit 5, is commercially available. Section 552.027 of the Government Code provides that a governmental body is not required under the Act to allow the inspection of information in a commercial publication purchased or acquired by the

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

governmental body for research purposes if the publication is commercially available to the public. See Gov't Code § 552.027(a). You state that the documents at issue "are used by [the district] for research purposes in developing instructional programming for students." You further state that the "materials were purchased by the [d]istrict from a private source" and that the district has informed the requestor where he may purchase the materials. Based upon your representations, we conclude that the information submitted as Exhibit 5 is commercially available information that falls within the scope of section 552.027 and need not be released to the requestor.

We next address your argument that information responsive to the first request, which you have submitted as Exhibit 1, is excepted from disclosure under section 552.111 of the Government Code. This section excepts from disclosure "an 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. 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. *City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 364 (Tex. 2000); *Arlington Indep. Sch. Dist. v. Tex. Attorney Gen.*, 37 S.W.3d 152 (Tex. App.—Austin 2001, no pet.). An agency's policymaking functions 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. ORD 615 at 5-6. Additionally, section 552.111 does not generally except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. *Arlington Indep. Sch. Dist.*, 37 S.W.3d at 160; ORD 615 at 4-5.

You explain that Exhibit 1 "consist[s] of [a] memorandum drafted by [the district's] Assistant Superintendent for Curriculum and Instructional Services" which contains "opinions and recommendations for action [that are] critical to the Board's policymaking process." Having considered your arguments and reviewed the information at issue, we agree that the Exhibit 1 may be withheld under section 552.111.

Next, we address your claim that the bank account numbers in the remaining information are excepted from disclosure under section 552.136 of the Government Code. This section states that "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136. The district must, therefore, withhold the bank account numbers that you have marked under section 552.136.

Finally, we address your claim that some of the remaining information is excepted under section 552.137 of the Government Code, which provides the following:

- (a) Except as otherwise provided by this section, an e-mail address of a member of the public that is provided for the purpose of communicating

electronically with a governmental body is confidential and not subject to disclosure under this chapter.

(b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.

(c) Subsection (a) does not apply to an e-mail address:

(1) provided to a governmental body by a person who has a contractual relationship with the governmental body or by the contractor's agent;

(2) provided to a governmental body by a vendor who seeks to contract with the governmental body or by the vendor's agent;

(3) contained in a response to a request for bids or proposals, contained in a response to similar invitations soliciting offers or information relating to a potential contract, or provided to a governmental body in the course of negotiating the terms of a contract or potential contract; or

(4) provided to a governmental body on a letterhead, coversheet, printed document, or other document made available to the public.

(d) Subsection (a) does not prevent a governmental body from disclosing an e-mail address for any reason to another governmental body or to a federal agency.

Gov't Code § 552.137. The e-mail address that you have marked appears to have been provided by a person who has a contractual relationship with the district. *See id.* § 552.137(c)(1). Thus, the district may not withhold this e-mail address under section 552.137.

In summary, the information responsive to the requestor's fifth request is commercially available information within the scope of section 552.027 of the Government Code and need not be released. The memorandum responsive to the requestor's first request may be withheld under section 552.111 of the Government Code. The district must withhold the marked bank account numbers under section 552.136 of the Government Code. The remaining submitted information must be released to the requestor.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

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,



L. Joseph James
Assistant Attorney General
Open Records Division

LJJ/dh

Ref: ID# 258182

Enc. Submitted documents

c: Mr. David Lovelace
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Austin, Texas 78734
(w/o enclosures)