



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

April 20, 2009

Ms. J. LeAnne Bram Lundy
Feldman, Rogers, Morris & Grover, L.L.P.
5718 Westheimer Road, Suite 1200
Houston, Texas 77057

OR2009-05182

Dear Ms. Lundy:

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# 340428.

The Eanes Independent School District (the "district"), which you represent, received a request for three categories of information related to the district's Americans with Disabilities Act ("ADA") transition and self evaluation plans. You inform us that some of the requested information has been withheld pursuant to the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g.¹ You claim that the requested information is excepted from disclosure under sections 552.111 and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.111 of the Government Code excepts from public 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. This section encompasses the deliberative process privilege. *See* Open Records Decision No. 615 at 2 (1993). The purpose of this exception 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, no writ); Open Records Decision No. 538 at 1-2 (1990).

¹The United States Department of Education Family Policy Compliance Office has informed this office that FERPA does not permit state and local educational authorities to disclose to this office, without parental or an adult student's consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act. Accordingly, we will not address the applicability of FERPA to any of the requested records.

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 that section 552.111 excepts from disclosure only those internal communications that consist of advice, recommendations, and opinions that reflect 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. The Dallas Morning News*, 22 S.W.3d 351 (Tex. 2000) (Gov't Code § 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). Moreover, section 552.111 does not protect facts and written observations of facts and events that are severable from advice, opinions, and recommendations. 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 may be withheld under section 552.111. See Open Records Decision No. 313 at 3 (1982).

This office has also concluded that a preliminary draft of a document that is intended for public release in its final form necessarily represents the drafter's advice, opinion, and recommendation with regard to the form and content of the final document, so as to be excepted from disclosure under section 552.111. See Open Records Decision No. 559 at 2 (1990) (applying statutory predecessor). Section 552.111 protects factual information in the draft that also will be included in the final version of the document. See *id.* at 2-3. Thus, section 552.111 encompasses the entire contents, including comments, underlining, deletions, and proofreading marks, of a preliminary draft of a policymaking document that will be released to the public in its final form. See *id.* at 2.

You inform us that a portion of the submitted information consists of draft documents that do not yet exist in final form, but are intended for release in their final form. You indicate these drafts reflect the opinions and recommendations of Eanes policymakers regarding school safety matters in the district, thus implicating the deliberative or policymaking processes of the district. Based on your representations and our review of the information at issue, we conclude that the district may withhold the drafts we have marked under section 552.111 of the Government Code.

You state that the remaining submitted information consists of the advice, opinions, and recommendations of the district's ADA task force involving district policymaking matters. Upon review of your representations and the information at issue, we agree that some of the remaining information consists of the advice, opinions, or recommendations of the district's ADA task force regarding policymaking matters. See Open Records Decision No. 666 (2000) (municipality's disclosure to municipally-appointed citizen advisory board of information

pertaining to municipally-owned power utility does not constitute release to public). However, you have failed to establish that the remaining information, which consists of general factual and administrative information, consists of advice, opinions, or recommendations for purposes of section 552.111. Therefore, section 552.111 is not applicable to the remaining submitted information. Accordingly, the district may only withhold the information we have marked under section 552.111 of the Government Code.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov't Code § 552.137(a)-(c). We note that some of the e-mail addresses you have marked pursuant to section 552.137 are work e-mail addresses belonging to employees of Broaddus & Associates and Fields and Associates Architects. Section 552.137 does not protect the work e-mail addresses of employees of an entity with which a governmental body has a contractual relationship. *Id.* § 552.137(c)(1). Thus, if the above companies provide services to the district under the terms of a contract, the district may not withhold the e-mail addresses we have marked under section 552.137. Other e-mail addresses that you have marked do belong to members of the public who, as you inform us, have not consented to release of their information. Thus, the district must withhold the remaining e-mail addresses you have marked pursuant to section 552.137 of the Government Code.

Next, we note that portions of the submitted information are subject to section 552.117(a)(1) of the Government Code, which excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. Gov't Code § 552.117. Section 552.117 also encompasses personal cellular telephone numbers, provided that the cellular phone service is paid for by the employee with his or her own funds. *See* Open Records Decision No. 670 at 6 (2001) (extending section 552.117(a)(1) exception to personal cellular phone number and personal pager number of employee who elects to withhold home phone number in accordance with section 552.024). Thus, the information we have marked must be withheld under section 552.117(a)(1) if it is the personal cellular telephone number of a district employee who timely elected confidentiality under section 552.024.

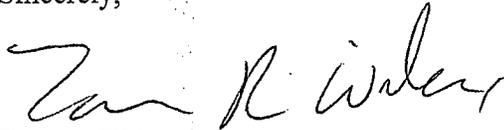
In summary, the district may withhold the information we have marked pursuant to section 552.111 of the Government Code. The district must generally withhold the information you have marked under section 552.137 of the Government Code unless the e-mail address is the work e-mail address belonging to employees of a business with which the district has a contractual relationship. Finally, the information we have marked must be withheld under section 552.117(a)(1) if it is the personal cellular telephone number of a

district employee who timely elected confidentiality under section 552.024. The remaining information must be released to the requestor.²

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.oag.state.tx.us/open/index_orl.php, 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Tamara Wilcox
Assistant Attorney General
Open Records Division

TW/eeg

Ref: ID# 340428

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Ms. Bernadette Gonzalez
Coordinator, Records & Legal Services
Eanes Independent School District
601 Camp Craft Road
Austin, Texas 78746-6512
(w/o enclosures)

²We note that the information being released contains confidential information to which the requestor has a right of access. See Gov't Code § 552.023(a); ORD 481 at 4. Therefore, if the district receives another request for this particular information from a different requestor, then the district must again seek a decision from this office.