



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 6, 2009

Mr. Fortunato G. Paredes
Escamilla & Poneck, Inc.
Attorney for United Independent School District
216 West Village Boulevard, Suite 202
Laredo, Texas 78041

OR2009-06041

Dear Mr. Paredes:

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# 342906.

The United Independent School District (the "district"), which you represent, received a request for copies of any forms the district has or has used in the past that may bar a person from employment with the district and any documents referencing or containing information about the requestor that are related to the requestor's employment with the district. You state you have disclosed most of the requested information. You claim the submitted information is exempted from disclosure under sections 552.101 and 552.111 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685

¹We note although the district also raises sections 552.102 and 552.117 of the Government Code, the district makes no arguments to support these exceptions. Therefore, we assume the district has withdrawn its claims that these sections apply to the submitted information.

(Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be met. *Id.* at 681-82. The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. The submitted information pertains to the qualification and assessment of an applicant for public employment and, thus, is of legitimate public interest. *See* Open Records Decision Nos. 444 at 5-6 (1986) (public has interest in public employee's qualifications and performance), 405 at 2-3 (1983) (public has interest in manner in which public employee performs job); *see also* 423 at 2 (1984) (scope of public employee privacy is narrow). We therefore determine the submitted information is not protected by common-law privacy and may not be withheld on that basis.

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).

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 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).

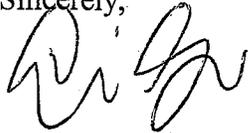
You assert the submitted information reflects the district's policymaking processes in reviewing job applications. You argue the disclosure of the submitted information would

inhibit free discussion of policy issues in the district's human resources office, particularly within the area of personnel matters. As noted, the submitted information relates solely to the hiring of a district employee. Thus, we find the submitted information concerns a personnel matter and is not related to the district's policymaking processes. Accordingly, the submitted information may not be withheld pursuant to section 552.111 of the Government Code. As you raise no other exceptions to disclosure, the district must release the submitted information.

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,



Emily Sitton
Assistant Attorney General
Open Records Division

EBS/rl

Ref: ID# 342906

Enc. Submitted documents

c: Requestor
(w/o enclosures)