



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 30, 2010

Ms. Ylise Janssen  
Senior School Law Attorney  
Office of the General Counsel  
Austin Independent School District  
1111 West Sixth Street, Room A-240  
Austin, Texas 78703-5399

OR2010-06236

Dear Ms. Janssen:

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# 377655.

The Austin Independent School District (the "district") received a request for twelve categories of information, including e-mails or other correspondence between four named individuals "and others" regarding another named individual.<sup>1</sup> You state the district has provided most of the requested information to the requestor. You claim the submitted e-mails and attachments are excepted from disclosure under sections 552.103 and 552.111.

---

<sup>1</sup>You state the district sought, but has not received, clarification from the requestor regarding the portion of the request pertaining to e-mails and correspondence of "others." See Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used). Accordingly, the district has no obligation at this time to release any information that may be responsive to the part of the request for which it has not received clarification. However, if the requestor responds to the clarification request, the district must seek a ruling from this office before withholding any responsive information from the requestor.

of the Government Code.<sup>2</sup> We have considered the exceptions you claim and reviewed the submitted information.

Section 552.103 of the Government Code provides, in relevant part:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

...

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103(a), (c). The district has the burden of providing relevant facts and documents to show the section 552.103 exception is applicable in a particular situation. The test for meeting this burden is a showing (1) litigation was pending or reasonably anticipated on the date the governmental body received the request for information, and (2) the information at issue is related to that litigation. *Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). The district must meet both prongs of this test for information to be excepted under section 552.103.

This office has long held that for purposes of section 552.103, "litigation" includes "contested cases" conducted in a quasi-judicial forum. *See* Open Records Decision Nos. 474 (1987), 368 (1983), 336 (1982), 301 (1982). In determining whether an administrative proceeding is conducted in a quasi-judicial forum, this office has focused on the following factors: (1) whether the dispute is, for all practical purposes, litigated in an administrative proceeding where (a) discovery takes place, (b) evidence is heard, (c) factual questions are resolved, and (d) a record is made; and (2) whether the proceeding is an adjudicative forum of first jurisdiction, *i.e.*, whether judicial review of the proceeding in district court is an

---

<sup>2</sup>Although you also raise section 552.101 of the Government Code in conjunction with sections 552.103 and 552.111 of the Government Code, this office has concluded section 552.101 does not encompass other exceptions found in the Act. *See* Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990).

appellate review and not the forum for resolving a controversy on the basis of evidence. *See* Open Records Decision No. 588 (1991).

You contend the submitted information relates to anticipated litigation because it pertains to grievances filed with the district by two district employees prior to the district's receipt of the request for information. You assert the district's grievance proceedings are conducted in a quasi-judicial forum. You state, and provide documentation showing, the district's policy for handling grievances includes a multi-level process wherein the appropriate administrators hear the grievances at each level, and the grievants "must present testimonial and documentary evidence" and "may be represented by counsel." However, you state the grievance resolution "ultimately may reside in a Level IV hearing before the [district's school board (the "school board").]" Furthermore, you have not provided any arguments explaining, and the supporting documents you provided regarding the district's grievance process do not reflect, the grievant has the opportunity to appeal the school board's decision to any higher adjudicative authority, such as the Texas Education Agency or a district court. Consequently, we find you have failed to demonstrate the district's administrative procedure for resolving grievances is conducted in a quasi-judicial forum, and thus, constitutes litigation for purposes of section 552.103. Therefore, none of the submitted information may be withheld under section 552.103 of the Government Code.

You claim the submitted information is excepted from disclosure under the deliberative process privilege encompassed by section 552.111 of the Government Code. *See* Open Records Decision No. 615 at 2 (1993). The purpose of section 552.111 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, opinions, and other material reflecting 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. Dallas Morning News*, 22 S.W.3d 351 (Tex. 2000) (section 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). 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. v. Tex. Attorney Gen.*, 37 S.W.3d 152 (Tex. App.—Austin 2001, no pet.); ORD 615 at 4-5.

The submitted information pertains to internal grievances filed by two district employees and the possible transfer of one of those employees. Thus, the e-mails and attachments pertain to administrative and personnel matters. As previously stated, the deliberative process privilege excepts communications pertaining to administrative and personnel matters of broad scope that affect a governmental body's policy mission. See ORD 631 at 3. In this instance, however, the information reflects it pertains to administrative and personnel issues involving only two district employees, and you have not explained how the e-mails and attachments pertain to administrative or personnel matters of broad scope that affect the district's policy mission. Therefore, you have failed to demonstrate how the deliberative process privilege applies to the submitted information. Accordingly, the submitted e-mails and attachments may not be withheld under section 552.111 of the Government Code.

We note the submitted information includes an e-mail address subject to section 552.137 of the Government Code, which 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).<sup>3</sup> See Gov't Code § 552.137(a)-(c). The e-mail address at issue in the submitted information is not specifically excluded by section 552.137(c). As such, this e-mail address, which we have marked, must be withheld under section 552.137 of the Government Code, unless the owner of the address has affirmatively consented to its release.<sup>4</sup> See *id.* § 552.137(b). The remaining information must be released.

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](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

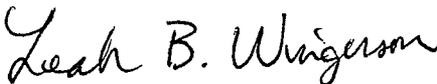
---

<sup>3</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

<sup>4</sup>We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in cursive script that reads "Leah B. Wingerson".

Leah B. Wingerson  
Assistant Attorney General  
Open Records Division

LBW/dls

Ref: ID# 377655

Enc. Submitted documents

c: Requestor  
(w/o enclosures)