



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

April 28, 2011

Dr. John J. Janssen
General Counsel
Office of Legal Services
Corpus Christi Independent School District
P.O. Box 110
Corpus Christi, Texas 78403-0110

OR2011-05847

Dear Dr. 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# 415725.

The Corpus Christi Independent School District (the "district") received two requests from the same requestor for meeting minutes, agenda notes, and records of the district's Student Health Advisory Council (the "council") regarding the Human Sexuality Curriculum for a specified period of time, and all communications between the district and members of specified entities during a specified period of time. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We first note you have redacted home addresses from the submitted records. Section 552.301 of the Government Code prescribes procedures a governmental body must follow in asking this office to determine whether requested information is excepted from public disclosure. *See* Gov't Code § 552.301(a). Section 552.301(e) requires a governmental body to submit the specific information at issue to this office, or representative samples if the information is voluminous, unless the governmental body is authorized to withhold the information pursuant to sections 552.024(c) or 552.147 of the Government Code or a previous determination. *See* Gov't Code § 552.301(e)(1)(D); Open Records Decision No. 673 (2001) (previous determinations). Section 552.024(c) authorizes a governmental body to withhold a current or former employee's home address, home telephone number, social security number, and information that reveals whether the

employee has family members, to the extent the employee chooses not to allow public access to the information, without requesting a decision. *See* Gov't Code § 552.024(c).

In this instance, we are able to ascertain the nature of the information that has been redacted from the submitted documents. However, we note the district has redacted the addresses of individuals who are not current or former district employees; thus, section 552.024(c) does not apply to these individuals' information. Accordingly, the district must release the information it has redacted for the individuals who are not current or former district employees. In the future, the district should refrain from redacting any information from records submitted to this office in connection with a request for a decision under the Act unless the district is authorized to withhold the information pursuant to sections 552.024(c) or 552.147(b) or a previous determination.

Next, we note that some of the submitted information, which we have marked, is not responsive because it was created after the present request for information was received. The Act does not require a governmental body to release information that did not exist when it received a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dism'd); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983). This ruling does not address the public availability of any information that is not responsive to the request, and the district need not release such information.

You argue the requested information should not be released because the council is not subject to the public access requirements of the Texas Open Meetings Act. *See* Gov't Code §§ 551.001-146. We note that this inquiry regarding the application of the Open Meetings Act to the council is outside the scope of this office's ruling process under the Act. Accordingly, we do not address the district's open meetings argument.

We note the responsive documents include the minutes of a public meeting of the district's Board of Trustees (the "board"). The minutes of a governmental body's public meetings are specifically made public under the Open Meetings Act. Gov't Code § 551.022 (minutes and tape recordings of open meetings are public records and shall be available for public inspection and copying upon request). Information that is specifically made public by statute may not be withheld from the public under any of the exceptions to public disclosure under chapter 552 of the Government Code. *See, e.g.,* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Accordingly, the board's agendas we have marked must be released in accordance with the Open Meetings Act.

We note some of the responsive information is subject to section 552.022 of the Government Code, which provides in pertinent part:

- (a) [T]he following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). Some of the responsive information constitutes completed reports that fall within the purview of section 552.022(a)(1). The district may only withhold the information subject to section 552.022(a)(1) if it is excepted from disclosure under section 552.108 of the Government Code or is expressly made confidential under other law. *See id.* Although you raise section 552.111 of the Government Code, this section is discretionary in nature and thus may be waived. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 470 at 7 (1987) (governmental body may waive statutory predecessor to section 552.111 deliberative process). As such, section 552.111 does not constitute other law that makes information expressly confidential for the purposes of section 552.022. Therefore, the district may not withhold this information under section 552.111. However, you assert the information is subject to section 552.101 of the Government Code, which does constitute "other law" for purposes of section 552.022; thus, we will consider the applicability of this exception to this information. We will also consider your arguments under sections 552.101 and 552.111 for the remaining responsive information that is not subject to section 552.022.

Section 552.101 of the Government Code excepts 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 common-law right of privacy, which protects information if it (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 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *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. Upon review, we find you have failed to demonstrate that the submitted information is highly intimate or embarrassing and not of legitimate public concern. Therefore, the district may not withhold any of the responsive information under section 552.101 of the Government Code in conjunction with common-law privacy.

We now address your arguments for the information that is not subject to section 552.022. You assert the information at issue 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). Section 552.111 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. Section 552.111 encompasses the deliberative process privilege. *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 reexamined 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. ORD 615 at 5; *see also City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 364 (Tex. 2000); *Arlington Indep. Sch. Dist. v. Texas Attorney Gen.*, 37 S.W.3d 152 (Tex. App.—Austin 2001, no pet.). Further, section 552.111 does not generally except from disclosure facts and written observations of facts and events that are severable from advice, opinions, and recommendations. *Arlington Indep. Sch. Dist.*, 37 S.W.3d at 157; 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 also may be withheld under section 552.111. *See* Open Records Decision No. 313 at 3 (1982). Section 552.111 can also encompass communications between a governmental body and a third-party, including a consultant or other party with a privity of interest. *See* Open Records Decision No. 561 at 9 (1990). For section 552.111 to apply, the governmental body must identify the third party and explain the nature of its relationship with the governmental body. Section 552.111 is not applicable to a communication between the governmental body and a third party unless the governmental body establishes it has a privity of interest or common deliberative process with the third party. *See id.*

You state the submitted information consists of communications between the district and the council regarding recommendations made to the district's Board of Trustee's pertaining to health education curriculum. Thus, we understand the district and the council share a privity of interest. Upon our review, we find the information we have marked constitutes advice, opinion, or recommendations and the district may this information under section 552.111. However, we find the remaining information does not constitute advice, opinion, or recommendation; thus, we find you have failed to demonstrate how the deliberative process privilege applies to the remaining information. Accordingly the district may not withhold the remaining responsive information on this basis.

We note you have redacted e-mail addresses of members of the public under section 552.137 of the Government Code.¹ Section 552.137 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). Gov't Code § 552.137(a)-(c).

¹We note this office 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.

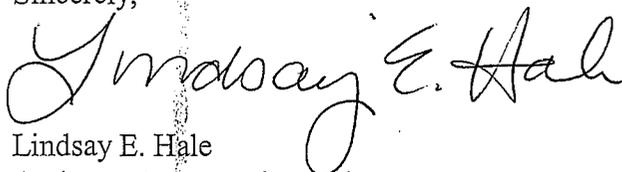
We note section 552.137 is not applicable to an institutional e-mail address, an Internet website address, the general e-mail address of a business, an e-mail address of a person who has a contractual relationship with a governmental body, or an e-mail address maintained by a governmental entity for one of its officials or employees. The additional e-mail addresses we have marked are not any of the types specifically excluded by section 552.137(c). Accordingly, the district must withhold the additional e-mail addresses we have marked under section 552.137 of the Government Code unless the owners of the addresses have affirmatively consented to their release under section 552.137(b).

In summary: (1) the district may withhold the information we have marked under section 552.111 of the Government Code; and (2) the district must withhold the additional e-mail addresses we have marked under section 552.137 of the Government Code unless the owners have consented to their release. The district must release the remaining responsive 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, toll free at (888) 672-6787.

Sincerely,



Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/em

Ref: ID# 415725

Enc. Submitted documents

c: Requestor
(w/o enclosures)